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Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 69

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, CHICAGO AND NORTH WESTERN RAILWAY COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED MAY 7, 1931

(35,865)

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VOL. I

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[fols. a-2] [Caption omitted]

[fol. 3-1]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Equity. No. 10034

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Chicago & North Western Railway Company, Illinois Central Railroad Company, The Chesapeake & Ohio Railway Company, Erie Railroad Company, The New York Central Railroad Company, The Pennsylvania Railroad Company, Southern Pacific Company, Atlantic Coast Line Railroad Company, Louisville & Nashville Railroad Company, Seaboard Air Line Railway Company, and Southern Railway Company, Petitioners,

vs.

THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

PETITION—Filed Sept. 19, 1930

To the Honorable the Judges of the District Court for the Northern District of Illinois, Eastern Division:

Your petitioners, who sue on behalf of themselves and of all other carriers subject to the Interstate Commerce Act which may have an interest in the premises, bring this action against The United States of America (hereinafter called the "United States") and the Interstate Commerce Commission (hereinafter called the "Commission") for the purpose of enjoining, setting aside, annulling and suspending a certain order of said Commission.

Petitioners respectfully set forth and allege the following facts as constituting their cause of action:

(1) Petitioners are all duly organized corporations and [fol. 3-2] common carriers by railroad subject to the Interstate Commerce Act, and operate lines of railroad in the

Northern District of Illinois, Eastern Division, and elsewhere. Petitioners, The Chicago, Rock Island & Pacific Railway Company, Chicago & North Western Railway Company and Illinois Central Railroad Company are corporations of the State of Illinois and have their principal offices and their principal operating offices in the City of Chicago, in the Northern District of Illinois, Eastern Division. The defendant, United States, is sued pursuant to express authority of the Congress of the United States, as provided in an Act approved October 22, 1913, known as the Urgent Deficiency Appropriations Act (38 Stat. L. 219, Chap. 32, Title 28, Sections 43-48, United States Code, 1926). The Commission is a Commission existing under and by virtue of the Interstate Commerce Act, and is specifically charged with the administration and enforcement of the provisions of said Act. The order of the Commission complained of does not relate to transportation or to a matter complained of in a petition before the Commission, but is the result of a proceeding instituted by the Commission on its own motion, designated on the docket of the Commission as "No. 17801, Rules for Car Hire Settlement."

(2) Petitioners were, at the times hereinafter mentioned, and are now, members of the American Railway Association (hereinafter called the "Association") which was and is a voluntary association of railroads of the United States. Its membership includes practically all of the Class I railroads in the United States as such roads are classified by the Commission, representing almost 98 per cent of the railroad mileage and the ownership of over 99 per cent of the railroad-owned freight car equipment in the United States. Every common-carrier railroad in the United States does not own a sufficient number of freight cars to transport the traffic handled by it. Many such roads do not own any such cars, and many others do not own them in sufficient number [fol. 3-3] to accommodate their own traffic. Other roads own more such cars than are necessary to transport their own traffic, so that under normal conditions the common-carrier railroads of the United States as a whole, do own sufficient freight car equipment to adequately care for the traffic handled by them as a whole. In transporting the traffic tendered to them, it has been for many years, and is now, the custom among the common-carrier railroads of the United States, to interchange freely among themselves the freight

cars owned by some of them, without regard to the ownership thereof. In this manner, railroads owning no such cars, or an insufficient number of them, have been, and are now, enabled to perform their public duties and adequately serve the public dependent upon them for transportation. Paragraph (10) of Section 1 of the Interstate Commerce Act provides as follows:

"The term 'car service' in this Act shall include the use, control, supply, movement, distribution, exchange, interchange and return of locomotives, cars and other vehicles used in the transportation of property * * * by any carrier by railroad subject to this Act"

Paragraph (11) of Section 1 of the same Act provides as follows:

"It shall be the duty of every carrier by railroad subject to this Act, to furnish safe and adequate car service and to establish, observe and enforce just and reasonable rules, regulations and practices with respect to car service; and every unjust and unreasonable rule, regulation and practice with respect to car service is prohibited and declared to be unlawful"

Under these conditions, it became necessary that the common-carrier railroads of the United States agree among themselves upon the terms and conditions under which the freight cars owned by some of them might be used by all of them in order to adequately serve the public dependent upon them for transportation. To meet this necessity, the Association promulgates what is known as the Car Service and Per Diem Agreement (hereinafter called the "per diem agreement"), which is a voluntary agreement between the [fol. 3-4] subscribers thereto, members of the Association, and in which each such subscriber agrees with every other subscriber to abide by and enforce the rules prescribed in the Code of Car Service and Per Diem Rules (hereinafter called the "per diem code"), which is a code also promulgated by the Association, governing the interchange and handling of railroad-owned freight cars by and between the owners and/or users thereof. Included in said per diem code are provisions fixing the rate of compensation to be paid to car-owning railroads for the use of their freight cars by other railroads; prescribing the accounting methods

to be followed by each railroad in accounting for cars used by it but owned by other railroads; prescribing the terms and conditions under which terminal switching reclaims will be paid by railroads on cars handled by other railroads in terminal switching service, and the manner of computing the amount thereof, and various other provisions, rules and regulations relating to the same subject. Said per diem code has never been required to be filed with the Commission and is not now so filed. Any common carrier may become a subscriber to the per diem code and become obligated by the provisions thereof and receive the benefits thereof, provided it is a common carrier by railroad, is equipped with adequate motive power, becomes a member of the Bureau for the Safe Transportation of Explosives and other dangerous articles, becomes a party to the Master Car Builders Interchange Agreement, puts into effect the National Car Demurrage Rules, and is a member or associate member of the Association, and if its application is favorably endorsed by two-thirds of the member railroads with which it connects. Practically all Class I railroads of the United States, including your petitioners, are subscribers to the per diem agreement and apply the provisions of the per diem code in connection with the interchange, handling and payment for the use of railroad owned freight cars. [fol. 3-5] There are many other common-carrier railroads in the United States which do not belong to the Association and are not subscribers to the per diem agreement such roads operating but a relatively small amount of mileage and owning relatively few freight cars. All of your petitioners operate Class I railroads, as such roads are classified by the Commission and each of them is the owner of a large number of freight cars which are now and have been for many years used by them and all other common-carrier railroads in the United States under the terms and conditions of the per diem code.

(3) By order dated January 4, 1926, the Commission, on its own motion, instituted a general investigation into and concerning the rules for car-hire settlements between common carriers by railroad in the United States, for the use and detention of freight cars while on the lines of carriers other than their owners, with a view to making such order or orders in the premises as might be warranted by the record, naming all common carriers by railroad within the

United States as respondents in said proceeding. In and by said order, the Commission also reopened and consolidated with said general investigation, instituted upon its own motion, certain other proceedings then pending before it and known upon the docket of said Commission as: No. 15420, Virginia Blue Ridge Company v. Southern Railway Company; No. 15517, Moorehead & North Fork Railroad Company v. Chesapeake & Ohio Railway Company; No. 4181, Second Industrial Railways Case, and Investigation and Suspension Docket No. 414, in so far as said proceedings involved the car-hire settlements of the Genesee & Wyoming Railroad Company, Tionesta Valley Railway Company, Chicago Short Line Railway, Illinois Northern Railway, Manufacturers Junction Railway and Pullman Railroad; No. 15697, Greenville & Northern Railway Company v. Southern Railway Company; No. 15771, Greenbrier & Eastern Railroad Company v. Sewell Valley Railroad Company, and Sub. No. 1 thereto, Sewell Valley Railroad [fol. 3-6] Company v. Chesapeake & Ohio Railway Company; and No. 16420, South Manchester Railroad Company v. New York, New Haven & Hartford Railroad Company.

(4) Thereafter, on June 7, 1926, the Commission entered another order, reopening and/or consolidating with said general investigation, so instituted on its own motion, the following cases, designated on the docket of the Commission as: No. 4181, Second Industrial Railways Case, and Investigation and Suspension Docket No. 414, in so far as said proceedings involved the car-hire settlements of Bay Terminal Railroad Company, Lake Erie & Fort Wayne Railroad Company, Lakeside & Marblehead Railroad Company, Valley Railroad Company, Owasco River Railway and Northampton & Bath Railroad Company; No. 11485, Birmingham Southern Railroad Company v. Director General, As Agent; No. 11983, Moshassuck Valley Railroad Company v. New York, New Haven & Hartford Railroad Company; No. 13118, Valley & Siletz Railroad Company v. Southern Pacific Company; No. 14433, Lime Rock Railroad Company v. Maine Central Railroad Company; No. 13614, Hanging Rock Iron Company v. Norfolk & Western Railway Company; No. 11367, Benwood & Wheeling Connecting Railway Company v. Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company; No. 10174, Sub. No. 1, National Tube Company v. Pennsylvania Railroad Com-

pany; No. 13757, Jefferson & Northwestern Railway Company v. Missouri, Kansas & Texas Railway Company of Texas; No. 16473, Kosciusko & South Eastern Railroad Company v. Illinois Central Railroad Company; No. 16597, The Wabash, Chester & Western Railroad Company v. Illinois Central Railroad Company; No. 16546, The Skaneateles Railroad Company v. The New York Central Railroad Company; and No. 16972, Big Sandy & Kentucky River Railway Company v. The Chesapeake & Ohio Railway Company.

(5) Thereafter, upon due notice, numerous hearings were had before said Commission in said general investigation, [fol. 3-7] and the causes reopened and/or consolidated therewith. On said hearings, the Association appeared on behalf of its membership, including petitioners, and introduced evidence. Thereafter, through its counsel, and on behalf of its members, including petitioners, the Association filed a brief in said proceedings and argued the same before the Commission. On January 7, 1930, the Commission issued its report and findings therein, a copy of said report and findings being attached hereto as a part of this petition, marked "Appendix A."

(6) Thereafter, on April 18, 1930, the Association, on behalf of all its members, including petitioners, filed with the Commission its petition for rehearing in said cause, which petition for rehearing was denied on June 9, 1930. On July 15, 1930, the Commission issued its supplemental report in said proceeding and its order in connection therewith, a copy of said supplemental report and said order being attached hereto as a part of this petition, marked "Appendix B." Said order is directed to the respondents named in the appendix thereto, which is a list of all common-carrier railroads in the United States, and includes your petitioners and all other members of the Association and all other subscribers to the per diem agreement.

(7) By paragraph (2) of said order, your petitioners and all other subscribers to the per diem agreement are required to make the same switching reclaim allowances to nonsubscribers as are made to subscribers to the per diem agreement, on cars handled in terminal switching service, as the latter term is defined by the switching reclaim rules of the Association. Under the per diem code, which in-

cludes the switching reclaim rules of the Association, every subscriber which handles freight cars owned by other subscribers, in terminal or intermediate switching service within designated switching limits on a switching charge, pays to each such owner road compensation at the rate of $1 per car per day for each day its cars are in the posses-
[fol. 3-8] sion of the road performing such switching service, and, with certain exceptions, the road performing such switching service is permitted to reclaim the amount so paid from the subscriber road to or from which the car is handled. There is no provision of any law which requires any carrier to allow such switching reclaims, and they are allowed as between your petitioners and other subscribers to the per diem agreement only by virtue of the provisions of the per diem code, which also require your petitioners and all other subscribers thereto to account for foreign freight cars used by them and pay compensation for such use direct to the owners thereof, and also require your petitioners and all other subscribers thereto to allow such reclaims to other subscribers. It is not certain that under the Commission's order a nonsubscriber which will be entitled to reclaim will be required to account for cars handled by it in terminal switching service to the owners thereof, nor is the right of a nonsubscriber to receive reclaim from subscribers made dependent upon the allowance of reclaim, under proper circumstances, by such nonsubscribers to subscribers. Your petitioners allege that their lines of railroad connect with numerous common-carrier railroads which are not subscribers to the per diem agreement, and to which they do not now allow any reclaims on freight cars handled in terminal switching service, as that term is defined by the switching reclaim rules of the Association; that they are constantly interchanging with such railroads large numbers of freight cars, owned by them and by other carriers, and which are handled by such railroads in such terminal switching service; that under said paragraph (2) of said order, they will be required to pay to such railroads so performing such terminal switching service, any compensation paid by such railroads to the owners of such freight cars so interchanged between petitioners and such railroads and handled by such railroads in such terminal switching service, and that they will receive nothing in return for such payment, either in service, or otherwise.

[fol. 3-9] Your petitioners further allege that there is no evidence in the record of the proceedings before the Commission justifying the foregoing requirement of said order; that the evidence is insufficient to sustain said requirement of said order and that it is, therefore, arbitrary, unlawful and void; that said requirement of said order, if enforced, will operate to confiscate the property of your petitioners and other carriers similarly situated and deprive them of their property without due process of law, and without compensation, in violation of the provisions of the Fifth Amendment to the Constitution of the United States.

(8) By paragraph (3) of said order, railroads less than one hundred miles in length, and which return railroad owned equipment to the road from which it is received, are relieved of the expense of reporting per diem accruals to the owners of freight cars used by them and are required to be attached to their connecting carriers for the purpose of car-hire settlement. Your petitioners show that there are numerous railroads in the United States less than one hundred miles in length, many of which are members of the Association and subscribers to the per diem agreement. Many of such roads connect with only one carrier and many of them connect with two or more carriers. If such roads are subscribers to the per diem agreement, they are now required to and do, under the per diem code, assume the accounting expense of reporting direct to car-owning carriers with respect to all freight cars of such roads used by them and pay direct to such car-owning carriers compensation for the use of such cars at the rate of $1 per car per day, the amount approved by the Commission in its first report. If such roads are not subscribers to the per diem agreement, the subscriber road delivering a foreign car to any of them is obliged to and does, under the per diem code, report such a car to the owner thereof and assume responsibility to the owner for any compensation that may be due such owner because of the use of its car by such nonsub- [fol. 3-10] scriber; but in such case, such subscriber collects from such nonsubscriber the compensation which is due to the owner of the car. Your petitioners and each of them connect with and are constantly interchanging large numbers of their own freight cars and freight cars owned by other carriers with numerous railroads less than 100 miles in length, and which, under the requirements of said para-

graph of said order will not be required to report to the owners of said cars the compensation which becomes due to such owners while such cars are in the possession of and in use by such roads less than 100 miles in length. In all cases where roads less than 100 miles in length have only one connecting carrier and in all cases where such roads have more than one connecting carrier and deliver back to each such connecting carrier the freight cars received from it, the effect of said paragraph (3) of said order will be to impose upon your petitioners and all carriers similarly situated, the burden and expense of reporting to car-owning railroads all per diem due them as compensation for the use of their freight cars by such roads less than 100 miles in length. Your petitioners allege that the requirements of said paragraph of said order are impractical and cannot be complied with in the practical operation of their railroads; that under the requirements of said paragraph of said order, if enforced, they will be required to assume and pay an operating expense incurred in the operation of such railroads less than 100 miles in length and which should be and now is paid by such railroads; that they will receive no benefit or return whatsoever to compensate them for such enforced expenditure by them. Your petitioners further allege that there is no evidence in the record of the proceedings before the Commission justifying the foregoing requirement of said order; that the evidence is insufficient to sustain or support said requirement of said order and that it is, therefore, arbitrary, unlawful and void; that said requirement of said order, if enforced, will operate to confis- [fol. 3-11] cate the property of your petitioners and other carriers similarly situated and deprive them of their property without due process of law, and without compensation, in violation of the provisions of the Fifth Amendment to the Constitution of the United States.

(9) By paragraph (5) of said order, common-carrier railroads outside of switching districts, other than those referred to in paragraph (4) of said order, are required to pay per diem to connecting roads on railroad-owned freight cars after deducting an average of two days' free time per loaded freight car interchanged, settlements to be made at the end of each calendar month. Under the provisions of this paragraph of said order, all common-carrier railroads

outside switching districts and which are less than 100 miles in length and which deliver all railroad-owned freight cars to the connecting carriers from which they receive such cars, will be permitted to use each car, not owned by them, for an average of two days without paying any compensation whatsoever to the owner of such car. Such carriers are also permitted to pay such compensation as may become due from them for their use of freight cars not owned by them, to their connecting carriers instead of to the carrier owning such cars. Your petitioners and each of them connect with many such carriers and constantly interchange with them large numbers of freight cars owned by petitioners and other carriers in the United States, which cars are used by such carriers in the conduct of their own business. The effect of said provision of said order, if enforced, will be to permit the use of freight cars owned by your petitioners, by such common-carrier railroads as are specified in said provision of said order and with which your petitioners connect, without any compensation whatever, or at a rate of compensation less than that found to be proper by the Commission. In the case of cars owned by carriers other than your petitioners and interchanged by your petitioners with such common carriers as are specified in said provision of said order and with which your petitioners connect, your [fol. 3-12] petitioners will be required, under the per diem code and paragraphs (1) and (4) of said order, to compensate the carriers owning such cars at the rate of $1 per car per day for each day such cars are in the possession of and in use by such carriers as are specified in paragraph (5) of said order, and with which your petitioners connect; but under said paragraph, your petitioners will be unable to recover from such carriers the amounts so paid by your petitioners to the roads owning such cars. Your petitioners allege that under the requirements of said provision of said order, they will be required to either permit the use of their freight cars without compensation or adequate compensation, or, in the alternative, to assume, on behalf of the carriers specified in said provision of said order, an expense incurred in the operation of their railroads and for their benefit; all without any return or compensation whatsoever to your petitioners. Your petitioners further allege the

said provision of said order is directly opposed to and contradictory of Finding 1 in the first report of the Commission, in which the Commission finds that all common-carrier railroads have the right to receive compensation at the rate of $1 per car per day for the use of their freight cars by other railroads. Your petitioners further allege that there is no law which requires them to furnish freight cars owned by them or by other carriers, for use by other railroads without compensation or adequate compensation, and that there is no law which authorizes the Commission to make such a requirement; that there is no evidence in the record of the proceedings before the Commission justifying the requirements of said paragraph (5) of said order; that the evidence is insufficient to sustain said paragraph of said order, and that it is, therefore, arbitrary, unlawful and void; and that said paragraph of said order, if enforced, will operate to confiscate the property of your petitioners and other carriers similarly situated, and deprive them of their property without due process of law, and without compensation, in [fol. 3-13] violation of the provisions of the Fifth Amendment to the Constitution of the United States.

(10) By paragraph (5) of said order, it is also provided that no car hire need be paid on cars received for return loading with coal from coal mines which are customarily dependent upon connecting carriers for car supply. Your petitioners connect with many common-carrier railroads which serve coal mines, but which own no cars in which coal can be transported. In the case of such carriers, your petitioners are required to and do furnish cars for loading at such coal mines, under the provisions of paragraph (12) of Section 1 of the Interstate Commerce Act, which, since February 29, 1920, has provided as follows:

"It shall also be the duty of every carrier by railroad to make just and reasonable distribution of cars for transportation of coal among the coal mines served by it, whether located upon its line or lines, or customarily dependent upon it for car supply."

Your petitioners allege, however, that when they furnish such cars for such use, there is a lawful obligation upon the carrier serving the coal mine to pay to the owner of such

equipment proper compensation for its use by such carrier in such service, and that such proper compensation was found by the Commission to be the sum of $1 per car per day. Under the requirements of paragraph (5) of said order, your petitioners will receive no compensation whatever when they furnish, pursuant to the requirement of paragraph (12) of Section 1 of the Interstate Commerce Act, their own equipment for return loading with coal at mines located on other lines. When they furnish for such loading, cars owned by other carriers, they will be required, under the per diem code and paragraphs (1) and (4) of said order, to pay to such car-owning carriers compensation at the rate of $1 per car per day during all the time such cars are in possession of and used by the carrier serving the mine, but will not be permitted to recover any of such compensation, so paid by them, from the carrier having [fol. 3-14] possession and making use of such cars. Your petitioners allege that said provision of said order is directly contradictory to Finding 1 in the first report of the Commission, in which the Commission finds that every common-carrier railroad is entitled to receive compensation in the amount of $1 per car for each day that its cars are used by other carriers. Your petitioners further allege that there is no law which requires them to furnish freight cars owned by them or by other carriers for use by or on other railroads without compensation, or which authorizes the Commission to make such a requirement; that the evidence introduced in the record of the proceedings before the Commission is insufficient to sustain said requirement of said order; that said requirement is not based upon any evidence of record in said proceedings and is, therefore, arbitrary, unlawful and void. Your petitioners further allege that the effect of said requirement of said order, if enforced, would be to confiscate the property of your petitioners and other carriers similarly situated and deprive them of their property without due process of law, and without compensation, contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

(11) By paragraph (1) of said order it is provided that the same daily car rental shall be paid the common-carrier nonsubscribers as respondents contemporaneously pay to subscribers to the per diem agreement, for the use of gen-

eral-service freight cars. While this requirement of said order insures full compensation to a carrier which does not subscribe to the per diem agreement, when its cars are used by other railroads, it does not insure similar compensation to your petitioners and to other subscriber carriers for the use of their cars by a nonsubscriber carrier. By paragraph (4) of said order it is provided that railroads more than 100 miles in length and railroads which do not return freight cars to the road from which they are received shall make car-hire settlements direct with car owners under the per diem code. Under this requirement of said order, all railroads of [fol. 3-15] the classes therein described, when they use the freight cars of other carriers, are required to account to and pay compensation direct to the owners thereof at the rate of $1 per car per day. To this extent, paragraph (4) of said order modifies paragraph (1) thereof, and insures to petitioners and other carriers subscribing to the per diem agreement, compensation when their freight cars are used by the classes of railroads therein described. The right of petitioners and all other carriers to receive such compensation for the use of their freight cars by other railroads is asserted and recognized by the Commission in Finding 1 of its first report, in which it is found that common-carrier railroads, whether subscribers to the per diem agreement or nonsubscribers, are entitled to receive reasonable compensation in the form of a daily rental for the use of their general-service freight cars when on foreign lines, and that the present per diem charge of $1 per car per day reasonably compensates car owners for average car ownership and maintenance costs. Under paragraph (5) of said order, however, this right of petitioners to receive compensation or adequate compensation for the use of their freight cars by other carriers is denied if such other carriers are outside switching districts, are less than 100 miles in length and return such cars to the carrier from which they were received, or if such cars are furnished for return loading with coal from coal mines customarily dependent upon petitioners for car supply. Your petitioners and each of them connect with many such carriers and have been and are now constantly interchanging with them freight cars owned by petitioners and other carriers, which cars are used by such carriers in the conduct of their own business, and on which cars so used by them, such carriers will not be required to pay any com-

pensation, or adequate compensation, either to your petitioners, in the case of their own cars, or to the owners thereof, in the case of cars owned by other carriers. Your petitioners further show that they and each of them operate railroads more than 100 miles in length and serve no coal mines customarily dependent upon connecting carriers of [fol. 3-16] petitioners for car supply; that under paragraph (4) of said order they will be required to pay $1 per car per day to the owners of any foreign freight cars used by them, for the entire time such cars are so used by them; that many of the railroads described in paragraph (5) of said order, and with some of which petitioners connect, own freight cars which are used by petitioners; that the effect of said paragraph (4) and (5) of said order will be to require petitioners to pay to the railroads described in said paragraph (5) full compensation for the use by petitioners of freight cars owned by such railroads, while denying to petitioners the right to receive such compensation for their freight cars while in use by such railroads. Your petitioners allege that the action of the Commission in relieving the railroads described in paragraph (5) of said order, of the obligation of paying compensation for the use by them of freight cars not owned by them, while requiring all other common-carrier railroads in the United States to pay such compensation to all other carriers, including those described in said paragraph (5), is arbitrary, unreasonable and illogical, and is not supported by any evidence in the record of the proceedings before the Commission and is, therefore, unlawful and void. Your petitioners further allege that the effect of said requirements of said order, if enforced, will be to confiscate the property of your petitioners and other carriers similarly situated and deprive them of their property without due process of law, and without compensation, contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

(12) The said order of the Commission provides that it will become effective on or before October 1, 1930, and subsequent to that date, your petitioners are required to cease and desist from applying rules for car-hire settlements which are in conflict with those prescribed for future application in and by said order. By paragraph (17) of Section 1 of the Interstate Commerce Act, heavy pecuniary

[fol. 3-17] penalties are imposed on any carrier, as well as its officers, agents and employees, who fail or refuse to obey any such order of the Commission, as that entered by it, as hereinbefore alleged, on the 15th day of July, 1930, to wit, a forfeiture to the United States of not less than $100 nor more than $500 for each such offense and $50 for each and every day of the continuance of such offense.

(13) Petitioners allege that many of the carriers described in paragraphs (3) and (5) of said order, and many of the carriers to which terminal switching reclaim allowances are required to be made under paragraph (2) of said order, are insolvent and will be unable to respond in damages or make refunds of amounts which petitioners and each of them will be required to pay to them or on their behalf should the said order of the Commission take effect and later be held to have been unlawfully made and entered. Petitioners further allege that said order, if permitted to become effective, will deprive them and each of them of large amounts which will be due them as compensation for the use of their freight cars by other carriers, and will require them to expend large amounts, all of which amounts they will hereafter be unable to recover; and that said order, unless it be suspended or set aside by order of this Court, will cause irreparable damage to each and all of your petitioners.

Wherefore your petitioners pray:

(1) That the United States and the Commission be made parties defendant to this petition, and that subpœneas in chancery issue out of and under the seal of this Honorable Court, directed to the defendants as required by law, and that due and proper service of such process and of this petition be forthwith made by filing a copy thereof in the office of the Secretary of the Commission and another copy in the Department of Justice, as provided by law, and that thereby the defendants and each of them be required, on or before a date to be specified in such subpoena or notices, to appear [fol. 3-18] herein and answer this petition, but not under oath, answer under oath being hereby expressly waived.

(2) That a temporary or interlocutory injunction be entered herein restraining, enjoining and suspending until the further order of this court the effect and enforcement of said

order of the Commission in so far as it is hereinbefore complained of as being illegal.

(3) That after final hearing, this court adjudge, order and decree that said order of the Commission, in so far as it is herein complained of as being illegal, has at all times been beyond the lawful authority of the Commission, and that to said extent said order be perpetually set aside, suspended and annulled and the enforcement thereof perpetually enjoined.

(4) That your petitioners and each of them may have such other and further relief in the premises as in equity and justice they are entitled to receive and as may be deemed by this Honorable Court to be adequate and proper under the circumstances.

And as in duty bound, your petitioners will ever pray, etc.

Alfred P. Thom, W. F. Dickinson, R. N. Van Doren, R. V. Fletcher, Herbert Fitzpatrick, George F. Brownell, C. C. Paulding, C. B. Heiserman, Ben C. Dey, F. Barron Grier, Edward S. Jouett, W. R. C. Cocke, L. E. Jeffries, Frank H. Towner, Solicitors for Petitioners.

[fol. 3-19] *Duly sworn to by O. E. Hallberg. Jurat omitted in printing.*

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INTERSTATE COMMERCE COMMISSION

No. 17801

RULES FOR CAR-HIRE SETTLEMENT

Submitted October 31, 1929. Decided January 7, 1930

Upon investigation into the subject of rules for car-hire settlement between common carriers by railroad in the United States for the use and detention of freight cars when on the lines of carriers other than their owners, we find that:

1. Common-carrier railroads, whether subscribers to the per diem agreement of the American Railway Association or nonsubscribers are entitled to receive reasonable compensation in the form of a daily rental for the use of their general-service freight cars when on foreign lines, and that the present per diem charge of $1 per car-day reasonably compensates car owners for average car ownership and maintenance costs. The reasonableness of this per diem rate is not questioned.
2. The per diem rules are unreasonable to the extent that they do not authorize payment of the same daily rental of $1 per car day to common-carrier nonsubscribers as to subscribers for the use of general-service freight cars.
3. Per diem rule 5 is unreasonable to extent that it prohibits car-hire allowances to nonsubscribers which perform terminal switching, as the latter term is defined by the switching-reclaim rules of the American Railway Association; and should be so amended as to provide for similar reclaim allowances to nonsubscribers as to subscriber lines.
4. Paragraph (b) of per diem rule 6, which pertains to car-hire settlements with nonsubscribers, is unreasonable and should be so amended as to direct subscribers to make settlements with nonsubscribers in conformity with our findings herein.
5. It is uneconomical and unreasonable to require short-line carriers, which return railroad-owned equipment to the road from which received, to report per diem accruals to numerous car owners throughout the country. Such lines should be attached to their connecting carriers for purpose of car-hire settlement.
6. For the future it will be reasonable for common-carrier railroads which interchange freight cars with more than one subscriber railroad, and which deliver to one or more subscribing carriers, cars which are received from another such carrier, to make car-hire settlements direct with car owners in accordance with the per diem rules, and for railroads 100 miles or more in length, regardless of the number of railroads with which they connect, to so report per diem to car owners.
7. For the future it will be reasonable for common-carrier railroads outside switching districts, other than those referred to in finding 6, to pay per diem to connecting carriers on railroad-owned cars after deducting an average of two days free time per loaded freight car interchanged,

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settlements to be made at the end of each calendar month, except that no car hire should be paid for cars received for return coal loading from coal mines.

8. The modified demurrage bases of settlement now in force with the Chicago Short Line, Illinois Northern, Manufacturers' Junction, Pullman, Bay Terminal, Benwood & Wheeling Connecting, Birmingham Southern, Genesee & Wyoming, Lake Erie & Fort Wayne, Lakeside & Marblehead, Lime Rock, McKeesport Connecting, Moshassuck Valley, Northampton & Bath, Tionesta Valley, Valley Railroad, and Valley & Siletz are unreasonable and should be abrogated, and that for the future it will be reasonable for connecting carriers to make car-hire settlements with these railroads in conformity with the general findings herein; provided, however, that the modified demurrage bases of settlement now in operation on such of these lines as perform switching service should be continued in force for a reasonable time, but not to exceed six months from the date hereof, to enable interested carriers to determine the amount of time actually required by each of such railroads to handle freight cars in terminal switching service.

9. The existing basis of car-hire settlement with the Big Sandy & Kentucky River, Greenville & Northern, Jefferson & Northwestern, Kosciusko & Southeastern, Morehead & North Fork, Skaneateles, South Manchester, and the Virginia Blue Ridge, is unreasonable, and that for the future it will be reasonable for connecting carriers to make car-hire settlements with these railroads in conformity with the general findings herein. Inasmuch as the bases of settlement here proposed are for general application by all common carriers by railroad throughout the country, no retroactive adjustments will be required.

Moultrie Hitt, *Ben B. Cain*, and *J. A. Streyer* for American Short Line Railroad Association; *A. P. Thom*, *S. T. Bledsoe*, *Bruce Scott*, *C. C. Paulding*, *James Stillwell*, *W. A. Northcutt*, *W. F. Dickinson*, *H. G. Fitzpatrick*, *E. C. Calhoun*, *J. R. Barse*, and *Frank H. Towner*, for American Railway Association; and *J. R. Barse* for General Managers' Association of Chicago.

T. D. Geoghegan for Bellefonte Central Railroad; *Robert E. Quirk* and *Norman, Quirk & Graham* for Big Sandy & Kentucky River Railroad, Greenville & Northern Railway, Kosciusko & Southeastern Railroad, Morehead & North Fork Railroad, Sewell Valley Railroad, South Manchester Railroad, Virginia Blue Ridge Railway, and Wabash, Chester & Western Railroad; *Chas. S. Belsterling* for Benwood and Wheeling Connecting Railway, Birmingham Southern Railroad, and McKeesport Connecting Railroad; *E. R. Effler* for Bay Terminal Railroad; *H. H. Sanborn* for Bay Point & Clayton Railroad; *H. A. Taylor* for Buffalo, Rochester & Pittsburgh Railroad, Delaware, Lackawanna & Western Railroad, Erie Railroad, Lehigh Valley Railroad, New York Central Railroad, and Pennsylvania Railroad; *W. L. Humphrey* for Charleston & Western Carolina Railway; *H. G. Fitzpatrick* and *J. S. Patterson* for Chesapeake & Ohio Railway; *H. H. Sanborn*, *N. E. Keller*, and *Sanborn, Roehl &*

Smith for California Central Railroad and Cement, Tolenas & Tidewater Railroad; and *K. L. Richmond* for Chicago & Eastern Illinois Railway.

Bruce Scott, *Kenneth L. Burgess*, and *Walter McFarland* for Chicago, Burlington & Quincy Railroad; *J. Fred. Sheehy* for Chicago Short Line Railway; *Ward Wire* for Colorado & Wyoming Railway; *Clifford H. Browder* for Deering Southwestern Railway and Owasco River Railway; *Daniel G. Cohan* for Detroit Terminal Railroad; *Arthur Hale* for Euclid Railroad; *J. R. Bell* for Great Northern Railway, Missouri Pacific Railroad, and Southern Pacific system; *T. H. Burgess* for Genesee & Wyoming Railroad; *E. E. Williamson* and *Ewing H. Scott* for Greenbrier & Eastern Railroad and Moshassuck Valley Railroad; *Elmer A. Smith* for Illinois Central Railroad; *Clifford H. Browder* and *Wm. S. Elliott* for Illinois Northern Railway; *L. R. Martin* for Indiana Northern Railway; *J. L. West* for Jefferson & Northwestern Railway; *E. J. O'Brien* for Kansas City, Kaw Valley & Western Railway; *F. H. Moore* and *Wm. E. Davis* for Kansas City Southern Railway, and Kansas & Missouri Railway & Terminal Company; *George T. Bell* and *R. R. Veldman* for Klickitat Log & Lumber Company; *George H. Parker* for Lime Rock Railroad; and *Chas. H. Paul*, *Fred Esch*, and *F. A. Nelson* for Longview Portland & Northern Railway.

W. A. Northcutt for Louisville & Nashville Railroad; *M. L. Southwell* for Macon, Dublin & Savannah Railroad; *John S. Burchmore*, *Luther M. Walter*, and *Nuel D. Belnap* for Manufacturers' Junction Railway; *R. T. Reinholdt* for Marinette, Tomahawk & Western Railroad; *A. R. Yarborough* for Middle Creek Railroad, Santa Fe Northwestern Railway, Stroud's Creek & Muddlety Railroad, and Winifrede Railroad; *Fred Esch* and *F. A. Nelson* for Mississippi Eastern Railway and Sibley, Lake Bisteneau & Southern Railway; *A. A. Adams* and *M. P. Smith* for Mississippi Southern Railroad; *C. S. Burg*, *A. H. McKnight*, *George Thompson*, and *Robert Thompson* for Missouri, Kansas & Texas Railway of Texas, and Texas & Pacific Railway; *H. H. Larimore* for Missouri Pacific Railroad; *J. S. Marvin* for National Automobile Chamber of Commerce; *Earl C. Calhoun* for New York Central Lines; *W. W. Meyer* for New York, New Haven & Hartford Railroad; and *Allen McCarty* for Northampton & Bath Railroad and Hannibal Connecting Railroad.

W. H. Abel for Oregon, Pacific & Eastern Railway; *E. E. Bennett* for Oregon-Washington Railroad & Navigation Company and Union Pacific Railroad; *Clinton W. Howard* for Pacific Northwest Traction Company, Puget Sound Electric Railway, and Tacoma Railway & Power Company; *Griffith, Peck & Coke* for Portland Electric Power

Company; *Harleigh H. Hartman* for Pullman Railroad; *Ira S. Smith* for Reynoldsville & Falls Creek Railroad; *Henry I. Moore* for Salt Lake & Utah Railroad; *Moultrie Hitt*, *Clarence A. Miller*, *G. Kibby Munson*, and *C. E. Cooney* for Skaneateles Railroad; *F. M. Hardin*, *B. L. Kroutter*, and *H. W. Tinker* for Southeastern Demurrage & Storage Bureau; and *C. J. Rixey*, *H. L. Walker*, and *W. N. McGehee* for Southern Railway system.

James B. Kerr and *Carey & Kerr* for Spokane, Portland & Seattle Railway; *Moultrie Hitt* and *Clarence A. Miller* for Tionesta Valley Railway; *Harry A. Brome* for Unadilla Valley Railway; *Moultrie Hitt*, *Clarence A. Miller*, *G. Kibby Munson*, and *C. L. Starr* for Valley & Siletz Railroad; and *R. C. Duff* for Waco, Beaumont, Trinity & Sabine Railway.

REPORT OF THE COMMISSION

McMANAMY *Chairman:*

This is a proceeding, instituted upon our own motion, into and concerning the rules for car-hire settlement between common carriers by railroad in the United States for the use and detention of freight cars while on the lines of carriers other than their owners, with a view to making such order or orders in the premises as may be warranted by the record. Three orders, dated January 4, June 7, and June 23, 1926, respectively, were entered. Prior to the initial order, instituting the investigation, a petition was filed by the American Short Line Railroad Association; hereinafter called the Short Line Association, praying for a general inquiry into this subject. The second Industrial Railways Case,[1] in so far as it relates to car-hire settlements with four short-line industrial common-carrier railroads[2] at Chicago, Ill., was reopened in June, 1925, and later consolidated with this proceeding. At various times we have prescribed modified demurrage rules as bases for settlements for use and detention of foreign freight cars when on the lines of 15 other industrial railroads, and such cases[3] were reopened and consoli-

[1] Docket No. 4181, In the Matter of Allowances to Short Lines of Railroad Serving Industries, and Investigation and Suspension Docket No. 414, Cancellation of Rates in Connection with Small Lines by Carriers in Official Classification Territory.

[2] Chicago Short Line Railway (reported in Chicago Short Line Ry. Co., 58 I. C. C. 561; Lake Erie & Fort Wayne R. R. Co., 63 I. C. C. 122; 78 I. C. C. 475); Illinois Northern Railway (reported in Illinois Northern Ry., 61 I. C. C. 629, and Lake Erie & Fort Wayne R. R. Co., 78 I. C. C. 475); Manufacturers' Junction Railway (reported in Manufacturers' Junction Ry. Co., 58 I. C. C. 666; Lake Erie & Fort Wayne R. R. Co., 63 I. C. C. 122; 78 I. C. C. 475); Pullman Railroad Company (reported in Pullman R. R. Co., 61 I. C. C. 637, and in Lake Erie & Fort Wayne R. R. Co., 78 I. C. C. 475).

[3] No. 4181 and I. and S. 414, supra; Bay Terminal R. R. Co. (reported in Bay Terminal R. R. Co., 58 I. C. C. 680; Lake Erie & Fort Wayne R. R. Co., 63 I. C. C. 122; 78 I. C. C. 475); Genesee & Wyoming R. R. Co., 62 I. C. C. 680; Lake Erie & Fort Wayne R. R. Co., 58 I. C. C. 558; 63 I. C. C. 122; 78 I. C. C. 475; Lakeside & Marblehead R. R. Co. (reported in Lakeside & Marblehead R. R. Co., 58 I. C. C. 671; Lake Erie & Fort Wayne R. R. Co., 63 I. C. C. 122; 78 I. C. C. 475); Northampton & Bath R. R. Co. case, 51 I. C. C. 68;

dated with this proceeding. In addition, a number of formal cases pertaining to car-hire settlements, some of which had been decided and reopened,[4] some heard but not decided,[5] some filed but not heard,[6] were likewise consolidated with this proceeding. A questionnaire requiring that certain data be furnished was directed against industrial railroads which now make settlements on a modified demurrage basis pursuant to our findings, and another questionnaire was issued which specified information that should be furnished by other short-line railroads which desired to be heard in this proceeding.

A proposed report was prepared by the director and a special examiner of our Bureau of Service. Exceptions to this report were filed and the case was orally argued. We have reached conclusions differing in minor respects from those recommended in the proposed report.

Testimony in behalf of short-line carriers as a class, and pertaining to the historical development of car-hire rules was presented by the Short Line Association. Testimony in support of existing per diem rules, and in opposition to the modified demurrage rules prescribed by us to govern settlements with specified industrial common carriers, was introduced by the American Railway Association, hereinafter designated the A. R. A., and by the General Managers' Association of Chicago. With one or two exceptions no testimony was voluntarily presented by individual trunk lines. Transportation officials of 15 such carriers, territorially representative of the United States, appeared in response to a request by the presiding examiner primarily for the purpose of explaining departures from the per diem

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Owasco River Ry., 53 I. C. C. 104 (basis of settlement there prescribed was overruled in Birmingham Southern R. R. Co. *v.* Director General, 61 I. C. C. 551, 556); Tionesta Valley Ry., 62 I. C. C. 473; Valley Railroad Company (reported in Valley R. R. Co., 58 I. C. C. 677; Lake Erie & Fort Wayne R. R. Co., 63 I. C. C. 122; 78 I. C. C. 475); No. 11367, Benwood & Wheeling Connecting Railway (reported in National Tube Co. *v.* P. C. C. & St. L. R. R. Co., 61 I. C. C. 590, and in Benwood & Wheeling Co. *v.* P. C. C. & St. L. R. R. Co., 62 I. C. C. 357); No. 11485, Birmingham Southern R. R. Co. *v.* Director General, 61 I. C. C. 551; No. 14433, Lime Rock R. R. Co. *v.* M. C. R. R. Co., 102 I. C. C. 48; No. 10174 (Sub-No. 1), McKeesport Connecting Railroad Co. (reported in National Tube Co. *v.* P. C. C. & St. L. R. R. Co., 61 I. C. C. 590); No. 11983, Moshassuck Valley R. R. Co. *v.* N. Y., N. H. & H. R. R. Co., 69 I. C. C. 368; No. 13014, Newcastle & Ohio River Ry. (reported in Hanging Rock Iron Co. *v.* N. & W. Ry. Co., 87 I. C. C. 373); No. 13118, Valley & Siletz R. R. Co. *v.* S. P. Co., 80 I. C. C. 724.

[4] No. 15420, Virginia Blue Ridge Ry. *v.* S. Ry. Co., 96 I. C. C. 591; No. 15517, Morehead & North Fork R. R. Co. *v.* C. & O. Ry. Co., 100 I. C. C. 45; No. 13757, Jefferson & Northwestern Ry. Co. *v.* M., K. & T. Ry. Co., 102 I. C. C. 72.

[5] No. 16473, Kosciusko & Southeastern R. R. Co. *v.* Illinois Central R. R.; No. 15697, Greenville & Northern Ry. Co. *v.* Southern Railway Co.; No. 15771, Greenbrier & Eastern R. R. Co. *v.* Sewell Valley R. R. Co. et al.; No. 15771 (Sub-No. 1), Sewell Valley R. R. Co. *v.* Chesapeake & Ohio Ry. Co.; No. 16420, South Manchester R. R. Co. *v.* N. Y., N. H. & H. R. R. Co.; No. 16597, Wabash, Chester & Western R. R. Co. and J. Fred Gilsler, Receiver, *v.* Illinois Central R. R. Co. et al.

[6] No. 16546, Skaneateles R. R. Co. *v.* New York Central R. R.; No. 16972, Big Sandy & Kentucky River Ry. *v.* Chesapeake & Ohio Ry.

rules. Witnesses for some 141 individual short-line railroads sub mitted evidence.

Railroad companies listed below when mentioned in the report wi be designated as follows:

Atchison, Topeka & Santa Fe Railway	Santa Fe
Atlanta, Birmingham & Atlantic Railway	A. B. & A.
Baltimore & Ohio Railroad	B. & O.
Baltimore & Ohio Chicago Terminal Railroad	B. & O. C. T.
Boston & Maine Railroad	B. & M.
Buffalo, Rochester & Pittsburgh Railway	B. R. & P.
Chesapeake & Ohio Railway	C. & O.
Chicago & North Western Railway	North Western
Chicago, Burlington & Quincy Railroad	Burlington
Chicago Great Western Railroad	C. G. W.
Chicago, Milwaukee, St. Paul & Pacific Railroad	C. M. St. P. &
Chicago, Rock Island & Pacific Railway	Rock Island
Chicago, St. Paul, Minneapolis & Omaha Railway	C. St. P. M. &
Delaware & Hudson Company	D. & H.
Delaware, Lackawanna & Western Railroad	Lackawanna
Illinois Central Railroad	Illinois Central
Kansas City, Mexico & Orient Railway	K. C. M. & O.
Louisville & Nashville Railroad	L. & N.
Minneapolis, St. Paul & Sault Ste. Marie Railway	Soo Line
Missouri-Kansas-Texas Railroad	M. K. & T.
Mobile & Ohio Railroad	M. & O.
New York, Chicago & St. Louis Railroad	Nickel Plate
New York, New Haven & Hartford Railroad	New Haven
New York, Ontario & Western Railway	N. Y. O. & W.
Pittsburgh & Lake Erie Railroad	P. & L. E.
St. Louis-San Francisco Railway	Frisco
St. Louis Southwestern Railway lines	St. L. S. W.
Seaboard Air Line Railway	Seaboard
Texas & Pacific Railway	T. & P.

CAR-HIRE SETTLEMENTS, GENERAL

Payment of rental for use of freight cars originated in the lat sixties. At first the compensation was 1 cent per mile on cars o special construction and 0.75 cent on ordinary equipment such a box cars. These rates were fixed by individual railroads and not b agreement or by recommendation of a national organization. N national railroad body existed. Some interchanges were effecte on a car for car basis without mileage payments. In the earl seventies the English plan, a combination of mileage and demur rage, was tried by a New England railroad, and in 1876 two central western carriers established a 50-cent per diem rate as between them selves, which was continued about two years, but other railroad

did not join them. The mileage basis was objectionable because (1) the car owner had no means of checking the distance its cars traveled when on foreign lines, and (2) it provided no incentive to accelerate car movement. Prior to 1886 the track gage of southern lines was 5 feet, northern lines 4 feet 8.5 inches, which precluded interchange of car units, but there was a limited interchange of car bodies, the bodies being transferred from narrow-gage trucks to broad-gage trucks. For car bodies some carriers would pay only one-half the customary mileage rate applicable to car units. About 1886 the track gage of southern railroads was changed to 4 feet 8.5 inches, permitting interchange of equipment units. Whenever a serious car shortage developed, the carriers made extraordinary efforts to improve car-handling regulations. A shortage existed in 1887 and, effective January 1, 1888, a mixed plan of per diem and mileage was adopted, which provided for a rental of 15 cents per car day to cover overhead and ownership costs, and 0.5 cent per mile to cover repairs.

This system was abolished after a few months' trial due in part to the additional accounting expense incurred, and in part to discovery by some railroads that foreign cars would cost them more money irrespective of amounts received on their own equipment. Later in 1888 the problem was considered by the General Time Convention, predecessor of the A. R. A., the name American Railway Association being adopted in 1891. A committee was appointed to study the question and proposed plans for car-hire settlements were submitted year after year, but it was not until 1902, when a car shortage existed, that the mileage system was replaced by the per diem method. The initial per diem code was made operative July 1, 1902, approximately 14 years after a committee was first appointed to study the matter. It did not apply to private cars. The rules then adopted and those now in force provide in substance that the railroad which has the car in its possession at midnight shall pay the rental for the succeeding day. A short intermediate line or other carrier performing intermediate service frequently receives a car after midnight, interchanges the car before the succeeding midnight, and pays no car hire whatsoever. When a freight car is interchanged, the delivering line transmits a junction report to the owner, and the latter looks to the receiving road for the per diem until notified that another interchange has been effected. At the end of the calendar month, the using carrier submits a statement to the car owner giving car initial and number, and the number of days such car was on the using line, remitting the rental due.

PER DIEM AGREEMENT

To make the rules binding, the carriers signed an agreement denominated the "per diem agreement," the original form of which was as follows:

> The Subscriber railroad company promises and agrees with each railroad company severally which subscribes and files a counterpart hereof with the secretary of the American Railway Association, that the subscriber will abide by the rules governing settlements for the use of freight cars, adopted by the association and designated "per diem rules" on the minutes of its proceedings; this agreement to continue for one year beginning July 1st, 1902, and thereafter until withdrawn on or after July 1st, 1903, by three months previous notice in writing to the secretary of the association.

Certain regulations pertaining to handling and home routing of freight cars, commonly termed "car-service rules," have since been incorporated by reference as a part of the per diem code. The amended agreement now in force is designated the "car service and per diem agreement," hereinafter called the per diem agreement, and provides that:

> The subscribing railroad company promises and agrees with each railroad company severally which subscribes and files a counterpart hereof with the General Secretary of the American Railway Association, that the subscriber will abide by and enforce the rules prescribed for the handling of and settlement for freight cars and included in the Codes of Car Service and Per Diem Rules, promulgated by the Association.
>
> FURTHER, That the subscribing railroad company agrees to the creation of a Car Service Division with plenary powers, as provided in Per Diem Rule 19, and which Division shall be established and maintained at Washington, and shall co-operate with the Interstate Commerce Commission in all car service matters on and between all railroads; and generally to act for the subscriber as its Agent in all such car service matters as fully and as effectually as could the subscriber.
>
> FURTHER, That the said Car Service Division is hereby designated and appointed as the agent of the subscribing railroad company, upon which service of all orders and directions with respect to car service, in accordance with the provisions as to car service of the Act to Regulate Commerce in force at the time, may be made by the Interstate Commerce Commission for and in the subscriber's behalf; a duplicate original of this agreement being filed by the subscriber with the Interstate Commerce Commission to evidence such designation.
>
> This agreement to continue until withdrawn by three months' previous notice in writing to the General Secretary of the Association.

The record discloses that carriers which have become parties to this agreement do not in all instances comply with the rules. This feature will be discussed later. Only common-carrier railroads are eligible to sign the per diem agreement. To become a subscriber a carrier must be equipped with adequate motive power. It must make application to become a member of the Bureau for the Safe

Transportation of Explosives and Other Dangerous Articles, and a party to the M. C. B. interchange agreement, and must put into effect the national car-demurrage rules. The application must be favorably endorsed by at least two-thirds of the lines connecting with such railroad. It must also apply for membership or associate membership in the A. R. A.

Articles of organization of the A. R. A. provide that only those railroads which operate 100 miles or more of road shall be eligible to become members; that each carrier may exercise the right of one membership for each 1,000 miles of road, or fraction thereof, including trackage rights, operated by it; and that in the adoption or revision of per diem rules one vote may be cast for each membership. To illustrate, a member which has 5,001 miles of road may cast six votes, representing six memberships. Carriers which operate less than 100 miles of road must become associate members to gain admission to the per diem agreement, but are not permitted to vote on the adoption or revision of the per diem rules by which they promise to be governed when signing such agreement. As subscribers and associate members they share the expense of the A. R. A. and agree to abide by its rules and regulations, but have no vote in the establishment of such regulations. The A. R. A. collects $40 per annum from each associate member as dues. The record does not disclose whether this sum is greater or less in proportion to mileage operated than amounts contributed by trunk-line carriers.

Associate members have no representatives on A. R. A. committees which formulate and interpret per diem rules. The Short Line Association contends that such representation should be accorded. To consider and report upon questions affecting the use and interchange of equipment the A. R. A. has established a transportation division. Its functions are executed chiefly through committees of railroad officials, the members of which are chosen from time to time by nomination and election and serve for stated periods. The transportation division has a general committee which is composed of 12 transportation officers of large carriers and a chairman employed by the A. R. A. Three subcommittees deal with questions arising under the per diem rules. The committee on car service, has 15 members, all of whom are officers of railroads more than 100 miles in length. The committee on records or accounting has 10 officials of large carriers as members. Changes in the code of per diem rules are considered by these two subcommittees. Their recommendations are submitted to the general committee, and, if approved, are then transmitted to the board of directors of the A. R. A. for authority to submit them to members of the A. R. A. for a vote by letter ballot.

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To be made effective, proposed rules must receive affirmative votes by a majority of the memberships, representing two-thirds of the freight cars owned or controlled by such members. A proposed change in the rules may be defeated by negative votes representing one-third of the freight cars, plus one. More than one-third of such cars are controlled by eight large carriers. The arbitration committee has five members, four of whom are officers of trunk lines, the fifth member is chairman and is employed by the A. R. A. If a question or dispute arises under the per diem rules it may be submitted to this committee, and its decision is final. The record shows that 174 formal cases have been decided by this committee, and numerous interpretations of the rules have been rendered.

RULE 1, THE PER DIEM RATE

Compensation for the use of freight cars owned by subscribers to the per diem agreement is prescribed by per diem rule No. 1. When the initial code was made operative July 1, 1902, car rental was fixed at 20 cents per car day. Prior to December, 1916, the rate varied from 20 to 50 cents; December, 1916, to February, 1920, from 60 to 75 cents; from March 1 to November 1, 1920, the rate was 90 cents, and since then $1. Penalties are provided by the current rule for failure to pay the rental promptly. For each six months that payment is withheld, the rate is increased 15 cents per car day, subject to a maximum increase of 60 cents.

The per diem rate is supposed to reflect the average cost, to the owner, of freight-car ownership and maintenance, and embraces cost of repairs, cost of taxes, cost of replacements, miscellaneous expenses, and 6 per cent interest on the investment. From the evidence of record, it is estimated that the cost of car ownership and maintenance averaged 83.812 cents per car day and $305.91 per car unit in the calendar year 1925, and approximately $1 per car day in that year for the periods cars were actually in service. Cars were idle a portion of the year, due in part to unserviceable condition, and in part to the fact that the supply of cars exceeded the demand.

RULES 2, 3, AND 4

Rule 2 explains the course to be pursued in reckoning car days, and provides that the day of receipt shall be disregarded and payment made for day of delivery. Rule 3, by providing that freight cars must be handled in accordance with car-service rules 1 to 5, incorporates those rules in the per diem code. Rule 4 stipulates that each railroad (meaning each subscriber to the per diem agree-

ment) shall be responsible to the owner for amounts accruing for the use of a car at the established per diem rate, whether such car is in road or switching service.

RULE NO. 5, SWITCHING RECLAIMS

The greatest opposition to a change from the mileage system to the per diem plan, effected in 1902, was manifested by trunk lines that switched a large amount of freight which other carriers handled in line-haul service. No mileage had been paid on cars in switching service, no matter how long the switching movement. The proposed per diem code contemplated that carriers would pay a daily rental for each foreign car on their rails. One carrier reported that its net earnings on switching traffic approximated 12 cents per car day, and therefore it could not pay 20 cents car rental. Railway executives sustained the traffic departments in their refusal to increase tariff switching charges throughout the country by amounts sufficient to absorb the proposed rental. Hence, to induce trunk lines which performed a large volume of switching to adopt the code, a compromise was reached whereby switching carriers paid rental direct to car owners each month, and then rendered bills for corresponding amounts against their immediate connecting railways which received the line haul. This refunding operation is denominated a switching reclaim, and is authorized by per diem rule 5, the original form of which read as follows:

> An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory.

Although this switching-reclaim rule was adopted as a temporary measure of expediency to obtain votes of trunk lines which performed switching service, it has been operative, in various forms, for more than 25 years, and is still in force. The current rule is quoted below:

> (a) An amount for each car in switching service may be reclaimed by each individual switching road from the road for which the service was performed. This amount shall be based upon the average number of days, not to exceed five (5), for cars handled in Terminal Switching Service except as otherwise provided in paragraph (b), actually required in such switching service to be determined annually, or at such other periods as may be agreed upon by the roads interested, by an examination of the records of each individual switching road, by the roads interested, for each local territory, except that roads in any local territory may agree to the settlement of terminal switching reclaims on the basis of actual time involved in handling the cars during the month for which the reclaim is made, subject to an agreed maximum number of days

on any one car, the reclaim on pick-up and diverted cars shall be determined by a plan to be agreed upon by the interested roads, and the total reclaim for any month shall not exceed an average of five (5) days per car.

(b) An amount equal to the actual per diem accruing on each car loaded with live stock handled in switching service (but not including cars loaded with emigrant movables or exhibition live stock, which are subject to Section (a) of this rule) may be reclaimed by each individual switching road from the road for which the service was performed, provided that such reclaim shall not exceed (1) day on any one car.

(c) Except as provided in paragraph (d), an intermediate switching road may reclaim one (1) day's per diem only from the delivering road on any car on which per diem accrues while in intermediate switching service.

A terminal switching road delivering a car to an intermediate switching road for delivery to a carrier road shall pay the reclaim to the intermediate switching road and may reclaim such amount from the carrier road for which the service was performed.

(d) No reclaim shall be allowed for an interterminal switching movement.

(e) No reclaim shall be allowed to a non-subscriber.

(f) Unless otherwise unanimously agreed to by the interested roads, the Code of Switching Reclaim Rules of The American Railway Association shall govern in determining switching reclaim allowances.

The mandatory provisions of paragraphs (a) to (d) of rule 5 are modified by the switching-reclaim rules, incorporated herein as an appendix. Rule 1 thereof provides in express terms that the carrier's road will allow the switching road a reclaim in accordance with per diem rule 5 at the current per diem rate. However, the reclaim rules are "subject to such changes as may be necessary to meet local conditions." By this provision subscriber railroads are authorized to depart from the requirements of rules 5 (a) to 5 (d). Several departures are disclosed by the record. A witness for the A. R. A. testified that these—

> Exceptions to per diem rule 5 and the Code of Switching Reclaim Rules * * * * prove that it is not possible to make hard and fast reclaim rules which will meet every local condition throughout the country. Different conditions in different localities usually require individual treatment. It was for this reason that the code of reclaim rules of the association are "subject to such changes as may be necessary to meet local conditions." This means that the roads directly interested in any switching district may unanimously agree to changes which are made necessary by local or special conditions, and under these rules the agreement must be unanimous on the part of interested roads or it cannot be made effective.

Original rule 5 placed no limit on the amount of the reclaim which might be allowed. The present rule provides that the reclaim of a switching road shall not exceed an average of five days per car, but this provision may be, and sometimes is, nullified by local agreements. For example, at termination of Federal control, the B. & O. C. T. and the Belt Railway of Chicago, both of which are controlled by trunk lines, declined to sign the per diem agreement

unless accorded a reclaim of six days on cars handled in terminal switching service at Chicago, Ill. Accordingly, their reclaim was increased to six days per loaded car. The reclaim of the Belt Railway has since been reduced to 5.3 days, that of the B. & O. C. T. remains at 6 days. The switching reclaim rules, supplementing by reference per diem rule 5, provide that a maximum detention of 8 days on a car loaded inbound or outbound, and 16 days if loaded in both directions, may be counted when fixing the reclaim, provided that the average for all cars considered must not exceed 5 days, but carriers at any point may agree not to conform with this regulation. To illustrate, in fixing reclaims at Chicago, a maximum detention of 10 days is counted on cars loaded in one direction, 20 days if loaded both inbound and outbound. Detention for which the switching railroad collects demurrage is not deducted when fixing the reclaim allowance, thus demonstrating that the A. R. A. does not regard demurrage collections as an offset against car-hire expense. The cost of policing the demurrage rules is substantial in amount and is discussed in connection with testimony presented by the Pullman and Illinois Northern Railroads. Under original rule 5, reclaims might be paid to any carrier which performed switching service. Since 1913 the rule has restricted the reclaim allowance to railroads which subscribe to the per diem agreement. This feature is calculated to induce railroads to become members of the A. R. A. and subscribe to the agreement. Some carriers disregard this rule and allow reclaims to nonsubscriber short lines which perform switching service. In applying original rule 5, a switching railroad was not permitted to make reclaims on its own cars when on its own rails. No per diem had been paid, hence there was nothing to be reclaimed. A switching railroad is now authorized by the switching-reclaim rules to collect per diem on its own cars when on its own lines from connecting carriers which handle in line-haul service the shipments carried by such cars.

Existing rule 5 provides that a reclaim of one day may be collected by intermediate switching roads only in instances where per diem is paid, but at Chicago, intermediate switching roads are authorized through local agreements to reclaim an arbitrary of one day's per diem irrespective of whether or not any per diem is paid. If cars are received by an intermediate switching railroad after midnight and delivered to another carrier before the succeeding midnight, no per diem would be paid by that carrier. Prior to January 1, 1916, reclaims were paid in some instances to railroads which performed interterminal switching, i. e., switching of cars containing shipments which originated and terminated within the same switching district. In such cases the originating road paid a re-

claim to the destination road and was allowed a larger share of the switching revenue than the destination carrier to enable it to bear the reclaim expense. The same carrier might be an originating road for one shipment and a destination carrier for another. At present each interterminal switching road which settles on a per diem basis bears its own per diem expense. The reclaim situation on interterminal cars is discussed at length in connection with testimony introduced by the Pullman and Illinois Northern.

There are two methods, approved by the rules, of determining the reclaim to which a switching railroad is entitled. At Denver, Colo., and certain other western terminals, the "actual time" basis is in force. A record is maintained by the switching railroad of each car handled in terminal switching service, and at the end of each month a detailed bill is rendered against connecting carriers for all per diem paid, subject to a maximum number of days agreed upon locally for individual cars, and provided further that the reclaim bills in the aggregate must not exceed an average of $5 per loaded car. This is assuming that carriers adopt and comply with rule 5. The plan in force at Chicago and at most other terminals contemplates an annual check of the records of each switching road for four seasonal months, such as March, June, September, and December, to be made by line-haul carriers, and if the average detention during such months is 3.5 days, for example, the switching railroad will be authorized to bill its immediate connections for $3.50 on each load switched during the succeeding year or until another check is made, regardless of the actual amounts of per diem paid during such periods.

In practice, reclaim records are seldom checked. At Chicago the last check was made in 1922, more than five years prior to the final hearing in this proceeding, which was held in March, 1928. In making these checks, inbound cars which are unloaded and then diverted to local, interterminal, or other service are not counted because of the difficulty of ascertaining the exact time the terminal switching transaction was completed, and the same statement applies when the operation is reversed and outbound loads are handled in cars previously employed in other service. This method of checking creates an opportunity for a switching road to profit by the reclaim, for if it diverts to other service so far as practicable only the cars which are released promptly and returns to connecting carriers all inbound cars which are held by consignees for long periods, the cars released promptly will not be counted in the check, and the switching road will be allowed an excessive reclaim. The A. R. A. contends, but without supporting data, that Chicago switching roads which now settle for car detention on a modified demur-

rage basis under our orders frequently cross haul empties in order to minimize detention of individual cars; that is, if a car is unloaded to-day which could be used to-morrow for an outbound load, it is returned to the connecting carrier to save one day's detention and another car is ordered for to-morrow's outbound load. A witness testified that such cross hauling is practiced by the Birmingham Southern, a carrier which now settles on a modified demurrage basis. If switching roads which settle on a per diem basis should engage in the same practice it would undoubtedly enable them to profit by the reclaim. The reclaim allowance under this plan is an estimated figure at best, and may be too high or too low, for the reason that the records of only four months are included in the check. Weather conditions and character of traffic affect car detention. It is not practicable to apply the "actual time" basis at points like Chicago, where inbound cars are unloaded and diverted to other service on switching lines, as the line-haul carrier has no way of determining from its own records when the diversion took place. The switching road ordinarily reclaims the same amount per car from each and every line-haul carrier with which it interchanges road-haul shipments, regardless of the detention on cars received from or delivered to that particular carrier.

The length of the switching railroad does not affect the right to reclaim. A statement of record, submitted by the A. R. A. indicates that the Union Railroad, of Pittsburgh, which operates 45 miles of road, is allowed a reclaim of 3.48 days on each line-haul load received from or delivered to carriers; the Delray Connecting at Detroit operates 28 miles of road, and is allowed a reclaim of 3.84 days; the Alton & Southern at St. Louis operates 22 miles of road and is allowed a reclaim of 3.59 days; the B. & O. C. T. operates 79 miles of first main track and is allowed a 6-day reclaim; at Chicago the Pennsylvania, New York Central, North Western, Erie, and certain other trunk lines are each allowed a 5-day reclaim. The Santa Fe reclaim is 4.97 days, Illinois Central 4.67, Wabash 4.62, Burlington 3.77 days, the last being the lowest reclaim at Chicago. A short movement by the line-haul carrier does not deprive the switching road of its reclaim privilege. If the road-haul movement is performed by a short-line carrier and the switching movement by a trunk line, the latter may enforce its right to a reclaim.

The right of a switching road to demand payment of reclaim bills is not dependent upon the proportion it receives of the freight revenues, provided its share of such revenue is designated a switching charge. An A. R. A. witness testified that "the amount of the charge has nothing to do with it." The A. R. A. arbitration committee has ruled that the switching charge may be on a car or ton

basis, and may be absorbed by connecting carriers out of the through rate or collected by the switching line from shippers and consignees.

Considerable expense is incurred by carriers in administering the switching-reclaim rule. In the calendar years 1925, 1926, and 1927, the A. R. A. supervised the checking of the records of 38 switching railroads outside of Chicago to determine the amount per car which each switching line should be allowed to reclaim from connecting railroads, and expended $14,626, or an average of about 5.5 cents per car checked. The preparation, checking, and payment of reclaim bills at the end of each month involves a substantial amount of labor, and the expense thereof at Chicago is estimated from evidence of record as 3 cents per car. An average of 10,500 cars are handled inbound and outbound at Chicago each day, 3,832,500 per year, which contain shipments consigned from or to points within the terminal district. At 3 cents per car, the cost incident to the presentation and payment of reclaim bills at Chicago would approximate $115,000 per year if these cars were only loaded in one direction.

The major portion of terminal switching is performed by carriers which also handle cars in road-haul movements. The prevailing extent of the reclaim practice is partly disclosed by statement of counsel for the A. R. A. that the Pennsylvania alone allows per diem reclaims in approximately 1,200 different situations. That carrier operates less than 7 per cent of the mileage of Class I carriers. The switching-reclaim debits and credits of a few large carriers for the calendar year 1927 are as follows:

	Switching reclaims, year 1927	
	Received	Paid
Pennsylvania system	$1,823,140.48	$3,674,242.42
Baltimore & Ohio	808,958.18	1,948,371.91
Chicago & North Western	1,410,129.06	1,390,180.46
Southern Pacific, Texas and Louisiana	298,984.24	337,287.71
Louisville & Nashville	427,887.98	822,040.40
Chesapeake & Ohio	157,482.02	686,218.00

The switching reclaim may operate to materially augment the switching revenues collected by railroads under published tariffs. This feature is exemplified by testimony of a witness for the Kansas City, Kaw Valley & Western Railroad, a short line hereinafter styled the Kaw Valley, concerning reclaim allowances at Kansas City, Mo. In 1925 per diem rule 5 was amended by authorizing reclaims, theretofore prohibited, on cars handled in intermediate switching service whenever per diem accrues. The existing switching rates at Kansas City, of $6 per car for an intermediate movement over

the Kansas & Missouri Railway & Terminal Company, hereinafter termed the K. & M., and $7.50 per car for a joint movement over that line and the Kansas City Southern, were established at a time when the carriers named bore their own car-rental expense. Operation of the revised rule required the Kaw Valley to pay intermediate switching reclaims to those carriers, thereby reducing its own revenues and increasing those of the switching lines. For the year 1927 such reclaims aggregated $4,173, an average of $1.33 per unit on 3,137 cars. In *Kansas City, Kaw Valley & Western Ry. Co.* v. *K. C. S. Ry. Co.*, 142 I. C. C. 366, the Kaw Valley assailed the reasonableness of intermediate switching charges at Kansas City, but the complaint was dismissed. On the question of intermediate reclaims, we said:

> Complainant contends that the payment of this reclaim subjects it to an additional hardship, which was not contemplated at the time of the establishment of the Kansas & Missouri switching charges, and that these were predicated on the assumption that the latter line would continue to bear any per diem charges payable on cars that it handled in intermediate switching service. The reasonableness of the per diem and reclaim rules is not before us in this proceeding and complainant does not specifically assail those rules.

In many instances the Kaw Valley is obliged to pay intermediate reclaims on both inbound and outbound cars, and in some cases such cars move over two intermediate switching roads in each direction. For example, if it has an outbound shipment to be routed in road-haul service over the Frisco, a car is ordered from that carrier, the empty passes over the rails of two intermediate switching roads, viz, the Kansas City Southern and the K. & M. and if per diem accrues while on either of these intermediate lines, intermediate reclaims are paid by the Kaw Valley. On the outbound movement the Kaw Valley again pays intermediate switching reclaims. In a reverse case where the Frisco originates a shipment in road-haul service for destination on the Kaw Valley, the Frisco pays the intermediate reclaim on the inbound loaded movement, but the Kaw Valley pays the intermediate reclaim when the empty car moves back to the Frisco. The same reclaim arrangement is in force with respect to cars interchanged between the Kaw Valley and other Kansas City trunk lines except that in some instances there is only one intermediate switching railroad. The Kaw Valley also pays intermediate reclaims on traffic handled which moves either from or to points on trunk lines within the Kansas City switching limits, except on sand which moves in one direction only. There is no intermediate reclaim on sand when consigned to points within the Kansas City switching limits, but this commodity comprises only about 15 per cent of ton-

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nage originated by the Kaw Valley. This carrier asks that the per diem rules be so amended as to prohibit intermediate switching reclaims. The position of the Kaw Valley seems to be unique, and rather than require a change in the intermediate-reclaim rules to fit this particular case, it would be preferable that such adjustment as conditions warrant be made in the rates for intermediate switching.

PER DIEM RULE 6

This rule relates to car-hire settlements between subscribers to the per diem agreement and nonsubscribers. As originally established, effective July 1, 1902, it contained the following provisions:

6. In case a road (meaning a subscriber to the per diem agreement) delivers an empty foreign car without the consent of the owner to a road which does not pay per diem (meaning to a non-subscriber); or if a road permits the loading or reconsigning of a foreign car without the consent of the owner to such a road it shall be responsible to the owner for the payment of an amount equal to the per diem accruing on the car while on such road.

With some modifications in phraseology, but without material change in substance, this rule remained in the code to and including June 30, 1922. Effective July 1, 1922, a new second paragraph was added, and the rule as then amended and now in force reads as follows:

6. (a) In case a subscriber delivers a car of any subscriber to a non-subscriber it shall be responsible to the owner for the per diem accruing on the car while on such non-subscriber road. The owner will accept settlement for the use of the car only from the delivering subscriber, which shall make settlement with the non-subscriber in accordance with paragraph (b) of this rule.

(b) Subscriber roads shall make settlement with their non-subscriber common carrier connections (other than roads which have been declared industrial common carriers) at the established per diem rate, without any free time allowance and without reclaim.

When substitution of per diem for mileage settlements was under consideration in 1902, some objections were registered by comparatively short-line railroads outside of switching districts. They sought the same consideration as switching roads. While the mileage system was operative prior to 1902 these outside short lines, by reason of their short hauls, paid little car hire. To conciliate such carriers the per diem rules were so framed that the long-haul carriers might accord the short-haul railroads the same treatment as switching roads if desired, this feature being left for railroads in each locality to adjust between themselves. It subsequently became the custom to allow many short-line railroads outside of switching districts, particularly feeder lines, to use freight cars for two days or more without payment of car hire. The basis of such allowances

were substantially similar in most instances. By adoption of rule 6 (b) the A. R. A. undertook to prescribe the conditions under which subscribers might deliver freight cars to nonsubscribers. While the rule is mandatory in terms and leaves no discretion to individual railroads, nevertheless some carriers have departed from its provisions. Rule 6 (b) is directly responsible for most of the car-hire controversies existing between subscribers to the per diem agreement on one hand and nonsubscriber short-line railroads on the other.

Some short lines were built through joint undertakings of local citizens to provide railway facilities to a given community. Numerous others were constructed by owners of timber, coal, or other mineral deposits, for the purpose of connecting their properties with railroads, and thereby creating an outlet for commodities produced. As the adjacent country developed and the population increased carriers of the latter class were called upon to handle traffic for other shippers. They receive but a short haul in originating traffic. The expense incident to originating traffic includes the per diem while cars are held within the free time by shippers under demurrage rules, cost of applying repairs in some instances to make cars suitable for loading, cost of maintaining stations and agents to receive the freight and see that shipments are properly loaded, and in some instances expense of billing shipments through to destination. If shipments are not properly loaded, the receiving line may rearrange the lading at the interchange point and charge the cost to the originating line. Trunk-line connections receive shipments from these feeders loaded and ready to move. They ordinarily enjoy longer hauls than the short originating line. During Federal control the railroad administration allowed two days' free time to a great many short-line railroads and attached them to their trunk-line connections for purposes of car-hire settlement, thus enabling them to make one settlement each month with an immediate connection for car-hire accruals, instead of separate settlements with a multitude of car owners, which procedure would be necessary were they to subscribe to the per diem agreement.

A few citations will illustrate some of the different types of nonsubscriber short-line railroads, some of which make car-hire settlements on a basis other than per diem. The Due West in South Carolina, 4.63 miles long, connects with the Southern at Donald, and was constructed about 18 years ago as a community railroad to provide rail transportation to a town which now has two colleges, a theological seminary, and 27 business concerns. Gross operating revenues in 1926 amounted to $7,313.79. Joint rates apply to some shipments. The president-treasurer-manager is paid a salary of

$35 per month, other officers receiving no compensation. The road was built with the understanding that the Southern would supply freight cars, and that settlements therefor would be effected on a demurrage basis. After establishment of per diem rule 6 (b) the Southern suggested that per diem be paid, but after a conference between officials the demurrage basis was continued in force. The president of the Due West expressed the view that it could not continue operations if straight per diem were assessed.

The Ozark Southern in southern Missouri is 14.7 miles long, connects with the Frisco, its only outlet, and was purchased in 1922 by citizens to provide rail transportation through a mountainous country to a county seat. It serves an area 35 miles long by 40 miles wide and a population of some 20,000 people. Industries reached include about 150 tomato-canning factories, a wholesale grocery, and a lumber mill. All freight revenues are derived from local tariff charges, which are added to the junction rates. In 1926 carload freight aggregated 542 cars, gross operating revenues $41,399. To meet operating expenses freight charges are very high. For hauling a 50-ton car of coal 14.7 miles, the tariff charge is $70; for a 30-ton car of grain $48. It pays per diem, which approximates $2,500 per year, without free time or reclaim, but contends it is bearing a disproportionate share of the car-hire burden.

The Marshall, Elysian Fields & Southeastern, a common carrier in the State of Texas, connects with the T. & P. at Marshall and extends a distance of 17.5 miles to Elysian Fields. Per diem without free time or reclaim is paid to the T. & P. for use of freight cars received from that carrier. When cars owned by this carrier are on the T. & P. in terminal switching service no compensation is received for the use of such equipment, although sometimes detained as long as 12 days per car.

The Dents Run operates 9 miles of main-line track in the State of Pennsylvania and connects with the Pennsylvania at a station designated Dents Run. Certain officers of a coal company served by this line own 47 per cent of the capital stock. Other mines are served. On coal shipments the Dents Run receives a division of the freight rate, amounting to 15 cents per ton or $7.50 per car for a 50-ton load. It settles with the Pennsylvania for car detention on the basis applied against shippers by the national car-demurrage rules, which rules exempt from demurrage charges empty or loaded cars which are held at mines or on mine sidings. In other words, the Pennsylvania treats this railroad as a mine so far as car-hire on coal cars is concerned. Outbound traffic consists entirely of coal. The Dents Run desires to continue on the existing car-hire basis. An official of the road predicted that establishment of the straight

per diem plan without an increase in freight-rate divisions would put the railroad out of business.

The Strouds Creek & Muddlety operates a stub-end railroad 9.5 miles long, and interchanges traffic with the Richwood branch of the B. & O. at Allendale, W. Va. The major portion of freight tonnage is lumber. Coal mines are also served. No car hire is paid by this railroad. The question of car hire on equipment received from the B. & O. for coal loading was considered in *Tioga Coal Co. v. B. & O. R. R. Co.*, 101 I. C. C. 611, wherein we said:

> Paragraph 12 of section 1 of the interstate commerce act, as amended, provides that it shall "be the duty of every carrier by railroad to make just and reasonable distribution of cars for transportation of coal among the coal mines served by it, *whether located upon its line or lines customarily dependent upon it for car supply*" [italics ours]. The record shows that the mines of complainant and intervener are entirely dependent upon defendant for their car supply. Under the provisions of the law no distinction can be made by defendant between the service given a mine on its Richwood branch and a mine on the Strouds Creek, each falling equally within the specific provision of the law requiring the carrier to furnish adequate car service, the one because it is actually "located on its line," and the other because it is "customarily dependent upon it for car supply". Whether at the present time a condition of car shortage prevails such as would require the giving of a rating to these mines is conjectural, and we shall not now enter any order on this phase of the case. For the present it will be sufficient to state that the mines of complainant and intervener are entitled to the same treatment in the matter of car service as the mines located directly upon defendant's Richwood branch.

The Hanover Railway in Illinois, 2.6 miles long, connects at North Hanover with the C. G. W. It serves a woolen-manufacturing company, a creamery, and a lumber and coal yard. About 26 per cent of the capital stock is held by the woolen company. It receives a division of the rates on practically all freight tonnage. Prior to and during Federal control it was allowed two days' free time, after which per diem was paid. At the termination of Federal control, it was given the option of continuing on that basis or settling under the average-demurrage agreement plan. The latter was chosen and is still in force. Its gross operating revenue averages about $12,000 per year. For the four years ended December 31, 1926, it had an operating deficit of $941.99.

The Bay Point & Clayton operates 9 miles of road extending from Bay Point, Calif., to Cowell, Calif. It interchanges traffic at Bay Point directly with the Santa Fe, and through the Santa Fe with the Southern Pacific, and at Clyde, Calif., with the San Francisco-Sacramento, an electric line. Capital stock is owned by the Cowell Portland Cement Company, an industry served. The Southern Pacific was urged but declined to build a spur track to the cement plant,

hence a line was constructed by the industry. Car-hire settlements are on a demurrage basis, but very little demurrage accrues. The record indicates that the Southern Pacific has constructed, maintains, and operates spur tracks for distances which exceed the length of this carrier to plants of certain competing cement companies which settle for car detention on the demurrage basis. It is contended that to require this road to pay per diem, which would ultimately be borne by the proprietary industry, would place the industry at a disadvantage as compared with competitors served directly by the Southern Pacific.

The Gulf & Sabine River, a tap-line common carrier in the State of Louisiana, operates 6.18 miles of main track, and interchanges traffic with the Santa Fe and Southern Pacific at Nitram, La. During Federal control and up to March 1, 1923, this carrier was allowed two days' free time per car, after which per diem was paid to direct connections. The free-time allowance was withdrawn because of pressure from the A. R. A. that per diem rule 6 be complied with. Per diem expense from March 1, 1923, to April 30, 1927, aggregated $47,781. Under the plan of settlement in force prior to March 1, 1923, the cost would have been $14.195, a difference of $33,586. The Gulf & Sabine River participates in joint rates and receives a division of 2.5 cents per 100 pounds on interstate shipments of lumber. In the 3-year period 1923 to 1925 there was a net railway operating deficit each year, the total deficit amounting to $94,113.

The York Utilities Company operates 36.81 miles of main track in the State of Maine, and interchanges traffic at Kennebunk, West Kennebunk, and Springvale with the B. & M. It is not owned or controlled by shippers or consignees. Freight service consists largely of terminal switching. Prior to July 1, 1922, it settled for car detention on a demurrage basis with two days' free time. Since that time it has made settlements on a per diem basis without free time or reclaim. No through rates are in force. Per diem accruals were equivalent to 29.3 per cent of gross freight revenues in 1923, 22.1 per cent in 1924, and 17.3 per cent in 1925. A witness testified that the B. & M. places cars on and removes cars from the interchange track in wholesale lots, the York incurs the expense of effecting retail deliveries and retail collections, which delivering and gathering expense is incurred by the B. & M. in serving shippers and consignees on its own rails at the point of interchange. In addition the B. & M. allows shippers and consignees two days for loading and unloading, an extra day when a Sunday or holiday intervenes, and additional time in inclement weather. The York suggests that it be allowed to settle on a modified per diem basis with three days'

free time, but any arrangement that will afford substantial relief without too much accounting will be acceptable.

With one or two exceptions, as heretofore stated, no testimony was voluntarily presented on behalf of individual trunk lines. At the request of the presiding examiner, officials of 15 railroads, territorially representative of the country; appeared and testified concerning departures from per diem rule 6 (b) and other rules. Their testimony disclosed that some of their nonsubscriber connections pay straight per diem, some settle on a modified per diem basis with free time or reclaim allowance for a specified number of days on each car interchanged, some pay demurrage rates after deducting free time for two or more days, and in some instances no car hire is paid. The following statement indicates the number of nonsubscriber railroads outside of Chicago, Ill., which interchange traffic with each of these trunk lines, the number which pay straight per diem, and the number which settle on some other basis:

Trunk line	Nonsubscriber connections		
	Total	Which pay straight per diem	Which settle on some other basis
Burlington	18	2	16
Chesapeake & Ohio	10	5	5
Great Northern	21	0	21
L. & N.	10	2	8
Missouri Pacific	20	3	17
New Haven	8	5	3
North Western	9	6	3
Pennsylvania	55	6	49
Soo Line	12	4	8
Southern	27	20	7
Southern Pacific (Pacific lines)	46	24	22
Southern Pacific (Texas and Louisiana)	14	10	4
St. L. S. W.	7	3	4
Union Pacific	15	6	9
B. & O.	[1]		

[1] Exact number not given.

The reasons for the establishment of rule 6 (b) were not clearly explained. An A. R. A. witness testified that some short lines connecting with more than one railroad and which controlled the routing of considerable traffic were reported to have exacted exorbitant car-hire allowances, and rule 6 (b) was calculated to terminate this practice, but no specific case could be cited to substantiate this testimony. However, if this were true, such carriers were still at liberty to negotiate concerning divisions of freight rates. The record affords ground for the belief that the primary purpose of rule 6 (b) was to influence railroads to become members of the A. R. A. or associate members if less than 100 miles in length, and to subscribe to the per diem agreement. Short lines, such as the York Utilities Company,

the net incomes of which were adversely affected by this regulation, were not consulted or accorded a hearing prior to its establishment. No steps to counteract the losses thus sustained were suggested by the A. R. A. When the short lines subsequently applied to trunk-line traffic departments for relief from the burdens imposed by this rule they were usually advised that the question was a car-hire matter which should be handled with the transportation departments. Applications to the latter frequently brought forth the response that the carrier was bound by the A. R. A. rules. Appeals to the A. R. A. through the Short Line Association were followed by conferences of officials representing both sides. The A. R. A. declined to modify rule 6 (b), and later the Short Line Association asked us to conduct an investigation.

The Short Line Association urges that the essential and paramount problem before us is to establish principles or rules which will permit a fair and reasonable apportionment of car-hire expense between car users. The time system now incorporated in the per diem code is characterized as unfair and unjust to short lines outside switching districts, as more time may elapse while a given car is in possession of a short line for loading or unloading with two days or more free time to the shippers or consignees, than will elapse while the car is in possession of a connecting carrier with a long road haul which receives the bulk of the revenue. The Short Line Association suggests further that any rule approved should be sufficiently broad and flexible to permit adaptation to varying local conditions. On this point, its attitude with respect to short lines outside switching districts is much the same as that of the A. R. A. concerning lines which perform service within switching districts. An A. R. A. witness testified that it is not possible to make hard and fast rules which will meet every local condition of switching roads throughout the country, and for this reason the reclaim rules are subject to such changes as may be necessary to meet local conditions. The Short Line Association contends that the statement concerning rigid rules is also applicable to short lines outside switching districts, and that in principle there is the same justification for reclaims or free time on cars employed to transport short-haul traffic under line-haul tariffs as under switching tariffs.

A witness for the Short Line Association proposed the adoption of the following rule as a substitute for existing per diem rule 6:

> Any common carrier by railroad which is a nonsubscriber to the per diem rules of the American Railway Association (other than roads which have been declared industrial common carriers) may make settlement for the use of all foreign freight cars with the direct connecting line from which such cars are received and at the standard mileage rate fixed by the Interstate Commerce

Commission and in effect at the time such delivery was made no car hire to be paid on cars handled in switching service for connecting lines and no reclaim to be received, and settlement to be made with the direct connecting line with which foreign freight cars are interchanged at the current demurrage rate (unless otherwise legally provided for) after the following time has elapsed, computing from the first 7 A. M. after actual placement on the interchange track until returned to the same or another recognized interchange track,

24 hours on cars received empty and returned empty;
72 hours on cars received loaded and returned empty;
72 hours on cars received empty and returned loaded;
144 hours on cars received loaded and returned loaded; in computing time, Sundays and legal holidays (National, State or Municipal) will be excluded.

Any such common carrier by railroad which is a nonsubscriber to the per diem rules of the American Railway Association and which controls interchangeable freight cars (either by ownership, lease or otherwise) when such cars are used by other carriers, to receive as compensation for such use the standard mileage rate fixed by the Interstate Commerce Commission and in effect at the time of such use (unless otherwise legally provided for) said compensation to be paid by the user direct to the owner or controller road upon the basis of the loaded and empty mileage and the mileage to be computed on the basis of distance tables without the elimination of mileage through switching districts and including any mileage made in switching service.

The above-proposed rule contemplates that we will fix a mileage rate applicable to railroad-owned freight cars in line-haul movement on nonsubscriber railroads; that line-haul nonsubscribers will make car-hire settlements with direct connections at such mileage rate for the use of foreign freight cars; that no charge will be made on cars handled by nonsubscribers in terminal-switching movement if released within 72 hours when loaded in one direction, or within 144 hours when loaded both inbound and outbound; that if cars loaded in one direction are held either by line-haul or switching nonsubscribers in excess of 72 hours exclusive of Sundays and holidays a penalty equivalent to demurrage rates will be paid, and for those loaded both in and out the penalty would not begin until expiration of 144 hours; that when cars owned by nonsubscribers are on foreign lines mileage rates will be paid for the use of such equipment. Under this plan the subscriber connection would have to bear the difference between the per diem rate for which it is responsible to car owner while the car is on the nonsubscriber connection and the mileage rate, on cars returned within certain specified periods. Considerable accounting would be involved in applying this rule. Furthermore, there would be no check in many instances on the mileage traveled, and the same fundamental objection would therefore be present as in connection with the mileage plan which was in force prior to the adoption of the per diem agreement.

Some short-line feeders with a haul of but a few miles contend they are entitled to treatment as liberal as trunk lines accord their own shippers and consignees. They argue in substance that trunk lines can allow a short-line feeder two or three days' free time on freight cars interchanged and still derive more net revenue from the haul than would accrue if the shipments originated on their own railroads at the point of interchange. In substantiation of this position, it is shown that under demurrage rules the trunk lines allow shippers and consignees two days' free time to load or unload, additional free time when Sundays and holidays intervene, and still further free time in stormy weather for loading or unloading commodities subject to damage by rain or snow; that trunk lines avoid switching expense on loads originated by feeders, as empty cars are delivered in wholesale lots on interchange tracks of feeder lines, and the latter bear the expense of retail deliveries to shippers and retail collections after lading is placed therein.

It is contended on behalf of many short-line railroads outside switching districts that they perform a purely gathering and delivering service which is analogous to that rendered by terminal switching railroads, and that they, like such switching railroads, should be accorded car-hire allowances. The A. R. A. argues that there is a difference in the character of service rendered. The record demonstrates that there is no substantial difference in the physical service performed by terminal switching roads on the one hand and short terminal railroads outside switching districts on the other hand. Moreover, interpretations of the per diem rules negative the suggestion that car-hire allowances are accorded railroads within switching districts because of the character of service performed. Participation or nonparticipation in through rates is the governing factor, not the character of service. Tariff charges from point of origin to destination, whether made up of a line-haul rate with terminal switching charges added, a combination of locals, or consisting of one through rate, are calculated to cover the transportation expenses of all carriers participating in the haul. The allowance of reclaims to certain terminal railroads within switching districts is merely a recognition of the fact that such carriers do not receive their proper share of the freight revenues.

Witnesses for some of the short-line nonsubscribers asked that they be authorized to settle with direct connections on a per diem basis, so modified that their car-hire expense would be equivalent to the amount they would pay on a mileage basis. A consideration of this suggestion necessitates a determination of the average mileage rate which would be required to compensate car owners for the cost of car ownership and maintenance. In the discussion herein of

per diem rule No. 1 it was estimated that the cost of owning and maintaining freight cars in the calendar year 1925, including 6 per cent on investment, averaged $305.91 per car. The distance traveled by freight cars on Class I railroads in 1925 averaged 28.5 miles per car day, 10,402.5 miles for the year. Dividing this mileage figure into $305.91, the average cost of ownership and maintenance, produces 2.94 cents as the cost per car-mile. This figure is only 2 per cent less than 3 cents, and the latter will be used to facilitate computations.

If nonsubscribers were to make car-hire settlements on a mileage basis, a carrier with an average haul of 33.3 miles per car, loaded and empty combined, would pay $1 per car. If cars loaded in one direction were on line three days, two days for shippers or consignees to load or unload, and one day for movement in and out, the same result would be obtained by making settlements on a modified per diem basis with two days' free time. No complicated or extensive accounting would be involved, merely one settlement at the close of each month with the connecting subscriber on a $1 per day basis after deduction of two days per car. Ordinarily the car-hire expense of very short lines greatly exceeds 3 cents per car-mile.

On behalf of short lines generally, it is urged that relief to such carriers be granted in this proceeding through authorization of car-hire allowances; that a wholesale readjustment of tariffs with a view of enabling short-line carriers to participate in through rates is impracticable, for the reason that in many instances the rates are fixed by State commission; and furthermore, that railway traffic departments are generally opposed to the inclusion of car-hire expense in divisions when dealing with short-line carriers. Some short-line carriers are not financially able to litigate a divisions case before us. It is contended further that free time for use of freight cars is a more simple and less expensive method of transferring revenues to short lines than establishment of through rates with divisions, as less accounting is involved, and the expense of including hundreds of short lines in numerous tariff publications is avoided.

RULES 7 AND 8

Rule 7 provides that with respect to cars destroyed, per diem shall cease from date notice is sent to car owner. Rule 8 pertains to per diem payments on cars which have been badly damaged on a foreign line.

RULE 9

Interchange reports, and the character thereof, are covered by this rule. When a freight car is transferred from one railroad to

another an interchange report in quadruplicate is prepared and signed by a representative of the delivering carrier, certified to by a representative of the receiving road, one copy is retained at the local office of each carrier, and one copy transmitted to car-record offices of such carriers.

RULES 10 AND 11

When a freight car is interchanged between subscriber railroads, the car-record office of the delivering line transmits a junction report to the owner, as required by rule 10, and the car owner looks to the receiving road for the per diem until notified by such carrier that the car has been delivered to another subscriber. If a car is delivered to a nonsubscriber the situation is much the same as when a car is delivered to a shipper that performs its own switching. No notice to the car owner is necessary, as per diem rule 6 provides that the owner will accept settlement for the use of such car only from the delivering subscriber.

Rule 11 stipulates that the car owner shall be furnished with a per diem statement, within 40 days after the end of each calendar month, giving the number of days each car has been in possession of the road making the report. Upon receipt of this information it is customary for the car owner to draw on the using line for the amount reported, after deducting per diem if any, which it owes the other carrier.

If a subscriber has delivered a foreign car to a nonsubscriber during the preceding month, it makes settlement with the car owner precisely the same as though no such delivery had been made. To illustrate, the Skaneateles, a nonsubscriber, connects with the New York Central, its only outlet. A witness for the New York Central testified that if a Pennsylvania car were delivered to the Skaneateles no junction report would be made to the car owner, and when settlement was made with the Pennsylvania at the end of the month, no mention would be made of the fact that the car had been on rails of the Skaneateles. The Pennsylvania would know nothing about it. The A. R. A. contends that all common-carrier railroads should subscribe to the per diem agreement and make reports direct to and make settlements with car owners throughout the country. The evidence demonstrates that unnecessary accounting expense would be incurred if short lines such as the Skaneateles were subscribers. The Skaneateles would probably find it necessary to employ additional clerical help in order to set up accounts with, make junction

and per diem reports to, and effect settlements with a multitude of car owners throughout the country; car owners would be obliged to set up accounts with additional railroads, receive and record additional reports, and make settlements with additional railroads at the end of each month. Subscribers which connect with existing nonsubscribers would then be obliged to make additional reports to car owners. For example, when the New York Central now delivers a car to the Skaneateles, no report is transmitted to car owners. If this short line were admitted to the agreement, such a report would be necessary on each car delivered to the Skaneateles. The New York Central makes one settlement at the end of each month with the Skaneateles, irrespective of whether the latter is a subscriber or nonsubscriber. It also effects one settlement each month with owners of cars which have been on its rails, regardless of whether or not any of such cars are delivered to the Skaneateles. No additional settlements are necessary by reason of the fact that this carrier is a nonsubscriber. During Federal control short lines such as the Skaneateles were attached to their trunk-line connections for purpose of car-hire settlement. The record indicates that the method then adopted is less complicated and much less expensive than the plan advocated by the A. R. A.

As regards railroads which connect with a large number of other carriers, the method of car accounting prescribed by the per diem rules is apparently the best system yet devised.

RULES 12, 13, 14, 15, 16, 17

Rule 12 merely states that "the settlement of amounts accruing for the use of cars shall be made monthly without regard to reclaims pending." Rule 13 outlines procedure and time limits in connection with presentation of reclaim bills. Rule 14 authorizes the reclaim of per diem in instances where cars are in error delivered to the wrong railroad, or delivered without forwarding directions, etc., the erring carrier to pay the reclaim. Rule 15 relates to responsibility for per diem accruing on cars which a road refuses to receive, where no embargo has been placed. Rule 16 provides that when an embargo is laid, the issuing carrier must receive cars loaded prior to the date the embargo was issued or be responsible for the per diem accruing for each day it fails to receive such equipment. Rule 17 provides for the establishment of an arbitration committee to settle cases arising under the rules.

RULE 18

This rule and the footnotes thereto read as follows:

Rule 18. These rules shall not apply to private cars or to cars of non-subscribers. (a)

(a) Resolution adopted November 15, 1916:

RESOLVED, That the following be adopted and made a standing resolution:

WHEREAS, There are a number of roads owning freight equipment which are not parties to the Per Diem Rules Agreement, and, therefore, not subject to the provisions thereof; and

WHEREAS, Such roads are, therefore, not entitled to receive Per Diem for the use of their equipment by subscriber roads; be it

RESOLVED, That the American Railway Association recommends that subscriber roads pay to non-subscriber roads, for the use of their freight cars, the same mileage rates as paid for the use of cars of private ownership, of similar class.

The Short Line Association contends that nonsubscribers as well as carriers which subscribe to the per diem agreement are entitled to adequate compensation for use of their general-service freight cars and that the existing disparity between car rentals which rests solely on that ground should be removed. The average cost to owners of freight-car ownership and maintenance, for periods when such cars are in service, approximates $1 per car day. By the resolution above quoted the A. R. A. recommends that subscribers pay the same mileage rates for the use of cars owned by nonsubscribers as are paid to cars of private ownership. This recommendation is generally complied with. Applying the average mileage per car of Class I carriers would result in payment for use of cars of a nonsubscriber of less than half the per diem rate. By per diem rule 1 which fixes the per diem rate as $1 per car day, in conjunction with this resolution, the A. R. A. establishes one rental for cars owned by subscribers, and a lower rental for similar cars owned by nonsubscribers. The latter have no voice in the matter. When fixing charges for use of equipment owned by subscribers, the A. R. A. regards nonsubscribers as railroads and exacts per diem of $1 per car day. For purpose of making settlements for equipment of nonsubscribers, the latter are accorded the same treatment as a shipper having private cars and are allowed mileage which averages less than 50 cents per car day, although their freight cars are ordinarily general-service cars, and their use when on foreign lines is not restricted to transportation of such shipments as owners may designate, but may be loaded as freely as other carrier-owned cars of similar type. Thus, subscribers have the service of nonsubscribers' cars at the rental paid for the use of private cars, but without the restrictions as to use which are usually attached to private equipment.

The A. R. A. agrees that car owners are entitled to adequate car rentals, and advocates a uniform rate, with the qualification that it be allowed to stipulate the conditions under which a compensatory rental may be obtained. It concedes that nonsubscribers should receive $1 per car rental, but declares the only way they can derive this revenue under present A. R. A. rules is to subscribe to the per diem agreement, and insists that every common-carrier railroad should become a party to such agreement. The experiences of the Sewell Valley (now a part of the C. & O.) demonstrate that a short-line railroad may lose more than it gains by becoming a subscriber. In *Coal from Sewell Valley R. R. Stations*, 58 I. C. C. 261, we said:

> The Sewell Valley receives 10 per cent of the rate and should furnish 10 per cent of the cars. It will be expected to equip itself with at least 22 coal cars within a reasonable time.

Subsequently the Sewell Valley purchased 25 steel hopper cars. Subscribers to the per diem agreement paid mileage of 1.5 cents per day for use of such equipment. On this basis it was receiving much less than the cost of ownership and maintenance, and in order to obtain the $1 rate it subscribed to the per diem agreement, effective February 1, 1924, but terminated its membership effective June 30, 1924. The additional clerical and accounting expense necessarily incurred more than offset the difference between the mileage and per diem, and for that reason it withdrew from the agreement.

The Oneida & Western operates some 30 miles of main-line road, and interchanges traffic at Oneida, Tenn., with the Southern, its only outlet. It owns 10 freight cars and to obtain the per diem rate of $1 per car day it subscribed to the per diem agreement and makes daily junction reports to, and monthly per diem settlements with, numerous car owners throughout the country. Exclusive of stationery and printing, the additional expense necessarily incurred averages 31.7 cents per car day on the 10 freight cars owned. This expense is made up of annual membership dues in the A. R. A. of $40, an additional clerk $960, postage $109.50, publication of name in the Official Railway Equipment Register $50 or more, total $1,159.50 per year, an average of $3.17 per calendar day of 31.7 cents daily per car owned. Most of this expense would be avoided if it withdrew from the agreement and made one settlement each month with the Southern.

The Appalachian is about 18.5 miles in length, and connects with the Southern at Ela, N. C. Settlements with the Southern for use and detention of freight cars, whether in line-haul or switching service, are on a straight demurrage basis, which arrangement has been

in force since 1920. Several years ago the Appalachian subscribed to the per diem agreement, but withdrew because of the expense of making reports to and car-hire settlements with numerous car owners throughout the country. It is estimated that an additional clerk at $125 per month would be necessary if it were to subscribe to the per diem agreement. In addition, some expense would be incurred for stationery and postage in sending out two or three hundred letters and per diem statements each month.

In *Lake Erie & Fort Wayne R. R. Co.*, 78 I. C. C. 475, we considered the compensation to be paid for the use of cars of non-subscribers, and said:

> Cars of these industrial common carriers interchanged with other railroads shall be settled for at the contemporaneous per diem rate.

RULES 19 AND 20

Rule 19 provides for the creation of a car-service division with headquarters at Washington, D. C. Rule 20 relates to interchange with Canadian railways, and is the last rule in the code of per diem rules.

MISCELLANEOUS RECLAIMS

Some subscribers store cars on the lines of other subscriber railroads, at or within easy reach of producing points, to be held for prospective loading of automobiles, coal, grain, and certain other commodities. On such equipment the holding lines are allowed to reclaim per diem, which accrues throughout the storage period regardless of the amount. These practices between subscribers are neither authorized nor forbidden by the per diem rules; they are considered as being outside the rules. Representatives of 15 trunk-line railroads appeared and testified concerning this and certain other practices. In substance their position is that such practices frequently enable the carriers to provide prompt service and effect economies in operation. By stationing a quantity of cars near important loading centers the shippers are promptly supplied with ample equipment when needed, and the carriers avoid the expense of hauling empty cars to the owning carrier. In a few instances, short-line originating subscribers are allowed to reclaim per diem for a specified number of days per car. Some carriers also send their own cars to points on foreign lines, free of per diem, for return loading of company material, which practice constitutes a departure from the rules as the originating carrier has the use of the cars without paying per diem thereon as required by per diem rules 1 and 4. This practice enables owners to hold company material and unload it at convenient periods without paying per diem on foreign equip-

ment which might otherwise be used. One trunk line which serves coal mines, and loads into its own cars coal which is purchased by other subscriber railroads for company fuel, occasionally waives per diem while its cars are on the rails of the purchaser.

During the calendar year 1927, the carriers designated below honored reclaims or waived per diem on their cars while on the lines of subscribers, for reasons given above, in the following amounts:

Railroad	Number of cars	Amount
Baltimore & Ohio	10,380	$35,983
Burlington	4,939	36,922
Great Northern	2,750	34,885
Missouri Pacific	15,086	116,455
North Western	3,359	66,032
Pennsylvania	79,437	215,330
Soo Line	3,575	16,047
Southern Pacific (Pacific lines)	6,834	218,721
Southern Pacific (Texas and Louisiana)	2,210	67,742
St. L. S. W.		141
Union Pacific	12,831	286,929
C. & O., L. & N., New Haven, Southern	None.	None.

INDUSTRIAL RAILROADS

The basis for car-hire settlements with industrial common carriers has been before us in many cases. Allowances for car hire in the guise of excessive reclaims might well be a fruitful source of rebate. As early as 1914 in the *Industrial Railways Case*, 29 I. C. C. 212, 232, in referring to this subject we said:

> During the period so designated for a given industrial line it is required to pay, to the trunk line owning the car, a per diem charge for the number of days the car is actually on its rails; but under its right to make reclaim for the whole period upon its immediate trunk-line connection, the industrial line makes a profit of 45 cents per day for each day saved out of the designated reclaim period by the prompt return of the car. The industrial lines that have been given the benefit of the modified agreement are not only practically relieved of the payment of per diem charges but, through these arrangements, many of them receive a substantial addition to their revenues, which accrues to the benefit of the controlling industry.
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> * * * * * * *
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> It means that instead of the 48 hours of free time accorded to ordinary shippers, these industries have from three and one-half to five and one-half days of free time, the possession of the car by their plant railway not being charged against the industry.
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> Just how much demurrage these industries escape from paying to the line carriers, on the fiction that a car in the possession of their industrial or plant railroad, and ordinarily inside their own plant, is not in their own possession, and therefore not subject to demurrage, is a matter of conjecture; but undoubtedly the results flowing from it give to that fiction a very large annual

money value to each of these industries. Even when such an industry detains a car beyond the maximum period of time allowed to its plant railway under the per diem agreement, and a demurrage charge results, the industry pays it not to the line carrier, but to its industrial railroad and therefore into its own treasury. As to those industries, demurrage is therefore entirely eliminated as a transportation charge. Competing industries, on the other hand, that have no such advantages must pay demurrage to the line carrier for the detention of all cars beyond the 48 hours of free time allowed in the tariffs, and they have the benefit of no per diem reclaim. * * *

We held in that case that allowances to, or divisions of rates with, any of the so-called industrial roads were unlawful.

Following that decision a number of industrially owned switching roads which prior to that time had been subscribers to the per diem agreement, and had received reclaims, were suspended from that agreement, and delivery of cars to such industrial roads was treated as delivery to the consignee. In other words, the industrial road was treated as a plant facility rather than as a common carrier. Following the decision of the Supreme Court of the United States in the *Tap Line Cases*, 234 U. S. 1, in which the court laid down a rule for determining when and under what circumstances an industrially owned railroad was a common carrier, we held certain carriers, including the Birmingham Southern, to be common carriers. *Joint Rates with Birmingham Southern R. R. Co.*, 32 I. C. C. 110.

The *Industrial Railways Case*, *supra*, was reopened and in the second decision, reported in 32 I. C. C. 129, we said at page 133:

We shall expect the trunk line roads, under the modification here made of our original findings, to reestablish allowances, divisions, or demurrage or per diem arrangements with industrial roads only in instances in which the transportation is bona fide, and in which it is clearly lawful and proper. Each case must be judged by its own facts and merits. Each of the industrial railways is or is not a common carrier. If it is a common carrier, it is entitled to all the rights and subject to all of the limitations provided in the act.

Subsequently, upon complaint of certain industrial roads, attacking proposed action of the trunk lines in withdrawing allowances or divisions in accordance with our first decision in the Industrial Railways Case, we said, in the second *Industrial Railways Case*, 34 I. C. C. 596, 600, decided July 1, 1915, in connection with per diem:

The recognition of such lines as common carriers in the association of railroads through which the interchange of cars is provided inures to the great advantage of the controlling industry served by such a line in the way of remission of charges for the detention of cars. In our original report on the *Industrial Railways Case* this matter was fully discussed, and it is unnecessary to revert to it further here.

Following this decision the industrially owned switching roads which had been declared by us to be common carriers were restored to membership in the per diem agreement. This included reclaim allowances.

It was not until the *Northampton & Bath R. R. Co. case*, 41 L. C. C. 68, that we specifically condemned the reclaim arrangements. A brief review of this case and those following will be helpful to an understanding of an extremely complex situation.

NO. 4181 I. AND S. NO. 414, NORTHAMPTON & BATH

In this case, decided July 6, 1916, we found that the Northampton & Bath was a common-carrier industrial line, and for the first time prescribed a modified demurrage arrangement as a basis of car-hire settlement with an industrial common carrier. Prior to that decision, this road was allowed five days' free time on cars owned by immediate connections, two days on other cars, after which per diem was paid.

The Northampton & Bath operates 8.24 miles of main track and 4.15 miles of yards and sidings in the State of Pennsylvania. The Atlas Portland Cement Company, hereinafter called the cement company, an industry served which furnishes a substantial proportion of the freight traffic, owns 4,974 shares of the capital stock out of a total of 5,000 shares. Traffic is interchanged at Northampton with the Central Railroad of New Jersey, hereinafter termed the Central, and at Bath Junction with the Lackawanna and the Lehigh & New England. We considered freight rates and divisions as well as car hire, and in our finding made the following comments respecting payment for the use and detention of freight cars:

> The Central and the Lehigh propose to allow the Northampton & Bath switching reclaims based on an arbitrary amount per day for every day that each car delivered to the Northampton & Bath is retained less than the average number of days, not exceeding five, actually required by the Northampton & Bath for its service, this average to be determined annually by an examination of the records of the Northampton & Bath and to be taken at three days for the first year. Switching reclaim arrangements, which can too readily be made to cover preferences, and advantages to the proprietary industries of the industrial lines accorded the reclaims, are inherently vicious. Just how this can be accomplished is fully explained in the *Industrial Railways Case*, 29 I. C. C. 212, 231.
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> We accordingly find that some different arrangement must be made with respect to the detention of cars by the Northampton & Bath and the industries which it serves. The Northampton & Bath should publish rules providing for the assessment of demurrage against shippers at the rate of $1 per day after the expiration of 48 hours' free time, while the Central should publish demurrage rules providing for the assessment of demurrage against the Northampton & Bath at the rate of $1 per day after the expiration of 48 hours' free time.

with the proviso that upon satisfactory proof by the Northampton & Bath to the Central that it has collected all demurrage due it from the shipper upon any car upon which the shipper has had to pay demurrage to the Northampton & Bath, or that the shipper has not exceeded the free time period allowed him the Central will refund to the Northampton & Bath $1 out of the demurrage received by the Central from the Northampton & Bath. The Lehigh and Lackawanna should publish similar rules. In this way shippers located on the Northampton & Bath will be accorded exactly the same treatment in the matter of demurrage as shippers located on the trunk lines and the Northampton & Bath will receive one day's free time in addition to the two days' free time which shippers will be allowed.

Pursuant to this finding a plan of settlement for the use and detention of freight cars, which is now in force and effect, was established between the Northampton & Bath on one hand and the Central, Lackawanna, and Lehigh & New England on the other hand. The terms of the plan are incorporated in written agreements and provide in substance that detention shall be computed from 7 a. m. after cars are placed on the interchange track of the Northampton & Bath; that such carrier shall be allowed three days' free time including Sundays and holidays; that the Northampton & Bath shall collect from its shippers and remit to connecting carriers the charges prescribed by the national car-demurrage rules, and that in any case where an individual car is on the Northampton & Bath in excess of three days including Sundays and holidays, an additional charge of $2 per car day shall be paid to the connecting trunk lines. The demurrage rate in force at the time of our decision was $1 per car day, but this rate has since been increased to $2 and the amount paid by the Northampton & Bath has accordingly been increased from $1 to $2. A joint communication pertaining to operation of these car-hire arrangements was addressed to us in connection with this investigation under date of February 28, 1927. This communication was signed by the respective presidents of the Northampton & Bath, the Central, and the Lehigh & New England, and by the vice president of the Lackawanna, on behalf of those railroads and reads as follows:

The undersigned Northampton and Bath Railroad Company, one of the respondents in the above-entitled proceeding and the undersigned Central Railroad Company of New Jersey, Delaware, Lackawanna and Western Railroad Company, and Lehigh & New England Railroad Company, who operate all the lines of railroad that connect with the lines of the Northampton & Bath Railroad Company, are each satisfied with and approve of the existing arrangements for car-hire settlements between Northampton & Bath Railroad Company and its connections.

These arrangements are shown by the agreements in writing, each of which is in the form annexed hereto. The form of these agreements was worked out through negotiations among the undersigned to comply with the views of the Commission as set forth in its report in *Second Industrial Railways Case*,

41 I. C. C. 68, at pp. 73 and 74; and was informally submitted to the Commission for review before adoption. It has been found satisfactory after being in operation for nearly ten years, and during all this time no reasons for any modifications or changes therein have suggested themselves.

Although the Northampton & Bath allows shippers to make demurrage settlements under the average agreement in accordance with the national car-demurrage rules, which arrangement permits a shipper to hold a car loaded in one direction for as long as seven days, and by canceling the debits thus accrued by credits earned on other cars avoid the payment of any demurrage, in settlements between the Northampton & Bath and connecting carriers each car is dealt with separately, there is no cancellation of debits by credits and charges are paid for detention on Sundays and holidays the same as other days. Demurrage collected from shippers and consignees is paid to connecting carriers at the suggestion of the Northampton & Bath to avoid preferences and advantages to the proprietary industries referred to in our decision. A witness testified that if the demurrage paid by the controlling industry were retained by the Northampton & Bath, such industry would virtually be paying demurrage through its railroad into its own treasury and would receive a preference and advantage.

Although the plan of settlement in force entitles the Northampton & Bath to three days' free time, in the period January 1, 1922, to July 31, 1927, freight cars were on its line an average of only 2.1 days per car unit including Sundays and holidays. A few of these cars were loaded in both directions. The number of loaded cars interchanged, the aggregate car days, and the average detention per car are shown in the following table by yearly periods:

	Carloads interchanged	Days on line	Average days per car
1922	42,715	84,558	2.0
1923	56,380	131,033	2.3
1924	54,528	106,867	2.0
1925	62,191	123,038	2.0
1926	62,248	130,429	2.1
1927 (Jan. 1 to July 31)	35,692	71,206	2.0
Total	313,754	647,131	2.1

These loads were handled in 309,667 car units. Outbound traffic is carried in box cars and about 98 per cent of inbound in open-top cars, hence there is little opportunity for loading outbound the cars which are received under load. If one-seventh of the car days be deducted in order to exclude the estimated number of Sundays included therein, there would remain 554,690 car days, or an average

detention of 1.77 days per load, which is less than the amount of free time allowed shippers by the demurrage rules.

The demurrage collected by the Northampton & Bath from shippers and consignees and the amounts paid to connecting carriers by yearly periods, 1922 to 1926, is set forth in the table immediately following.

	Collected from shippers and consignees	Amounts paid to connecting carriers	
		Paid for detention on Northampton & Bath	Total paid to connecting lines
1922	$2,951	$310	$3,261
1923	17,450	350	17,800
1924	2,147	132	2,279
1925	1,279	164	1,443
1926	6,100	96	6,196
Total	29,927	1,052	30,979

The service performed by the Northampton & Bath is line haul, no part thereof being within a switching district. In 1926 approximately 97 per cent of its traffic was handled under joint through rates out of which it received a division. The remainder was handled under local line-haul rates which were absorbed by connecting carriers. Prior to 1925 a substantial proportion of freight traffic was covered by local rates which were absorbed. Tariff changes are being made as rapidly as practicable, placing all rates in joint tariffs so as to terminate the practice of absorbing line-haul charges. In *Coal Rates on the Stony Fork Branch*, 26 I. C. C. 168, 172, we said:

> There is no provision in the law for the establishment of through rates by absorbing the local rates of another carrier for the purpose of establishing through rates over a through route composed of two or more carriers over which through route no joint through rate has been fixed by the agreement.

The divisions of the Northampton & Bath were fixed in conformity with the formula prescribed by us and do not include any allowances for car-hire expense.

At the time of our decision the Northampton & Bath performed considerable intraplant switching for the cement company, but this service has been discontinued. It also carried passengers, but its traffic is now exclusively freight.

Although the service performed by it is technically classified as line haul, its physical character is more nearly comparable to switching service than line-haul service. Train crews are paid on the same basis as switching crews; trains are not run on schedule but as extra trains in each instance; trains of cars do not carry a caboose;

two of its locomotives are regular switch engines, the other three road engines; the maximum length of haul is 8 miles. The boundary lines of switching districts are arbitrarily fixed by trunk lines.

The A. R. A. asks that the existing basis of settlement be abolished and that the per diem basis be established. Its net railway operating income in 1926 amounted to $36,382; payment of straight per diem would have created a net railway operating deficit of $87,851. In 1925 net railway operating income was $49,150. Payment of straight per diem would have created a net railway operating deficit of $72,445. Investment in road and equipment is not shown of record. Capital stock aggregates $500,000.

Under the existing rule all demurrage collected from shippers and consignees is remitted to connecting carriers. On a per diem basis all demurrage would be retained, regardless of whether or not reclaims were received.

The Northampton & Bath urges that no change be made in the existing plan of car-hire settlement unless its freight divisions are adjusted at the same time. The question of divisions, however, is not here in issue.

NO. 4181, I. AND S. NO. 414, OWASCO RIVER RAILWAY.

In *Owasco River Ry.*, 53 I. C. C. 104, 112, in dealing with the car-hire settlements with this industrial common carrier, we said:

It appears that prior to our decision in the *Industrial Railways Case, supra*, cars were interchanged between the Owasco and the New York Central under a per diem agreement. There was no such agreement between the Owasco and the Lehigh Valley and the latter received no compensation for delay to cars delivered by it to the Owasco. Both the New York Central and the Lehigh Valley have claims against the Owasco, or the industries served by it, for demurrage which has accrued during the past several years. These claims are computed on the same basis as if interchange of cars with the Owasco constituted receipt from or delivery to industries on that line. From March, 1908, to June, 1916, the Owasco collected from industries served by it demurrage in the sum of $9,651. An average demurrage agreement was in effect with the harvester company but not with other industries served by the Owasco. From July 1, 1915, to June 30, 1916, the Owasco interchanged 6,772 cars with the New York Central, which were detained on the Owasco an average of 3.83 days, and with the Lehigh Valley 855 cars, which were detained on the Owasco an average of 4.037 days. In some instances cars delivered under load to the Owasco by its trunk line connections are used in intraplant service before they are returned to the trunk lines.

With respect to car interchange between the Owasco and its trunk line connections we find that the following arrangement for detention to and demurrage on cars is reasonable and proper: (1) Computed from the delivery of the cars to the Owasco to their return to the trunk line the Owasco should pay to the trunk line per diem in accordance with the rules and at the rates per day generally in effect; (2) for such detention as shall be caused by and

properly chargeable to shippers or receivers on its line the Owasco should charge and collect demurrage under the rules and at the rates generally in effect; and (3) settlements should be made monthly.

Under this arrangement shippers located on the Owasco will be accorded the same treatment in the matter of demurrage as those located on the trunk lines and the Owasco will be enabled to execute average demurrage agreements with industries served by it under circumstances similar to those which control the making of such agreements between trunk lines and industries served by them.

Although the service of the Owasco was described as exclusively the switching of carload freight, no mention was made in findings concerning reclaims of per diem paid.

NO. 11485, BIRMINGHAM SOUTHERN RAILROAD COMPANY *v.* DIRECTOR GENERAL

In Birmingham Southern R. R. Co. v. *Director General*, 61 I. C. C. 551, we again prescribed a modified demurrage basis of car-hire settlement for an industrial common carrier and said: "We are aware that the conclusions here reached differ from those reached in the Owasco River Case, *supra*, which accordingly no longer stands as a basis for future arrangements."

The Birmingham Southern is a common carrier and operates a short railroad in Alabama, consisting of 31.76 miles of main track and 57.79 miles of yards and sidings. It interchanges traffic with the Alabama Great Southern, A. B. & A., Birmingham Belt, Central of Georgia, Illinois Central, L. & N., M. & O., Seaboard, and Southern. Freight-car interchange points are located at Birmingham, Bessemer, and Ensley. The Birmingham Southern performs both line-haul and terminal-switching service. Occasionally a car is handled in intermediate switching service, but practically no intra-plant switching is performed. No passenger service is rendered. The Birmingham Southern is controlled through stock ownership by the Tennessee Coal, Iron & Railroad Company, an industry served. It also serves approximately 45 industries which are not affiliated with the railroad. It owns 218 freight cars, some of which are interchanged with other railroads. When on foreign lines in terminal-switching service at Birmingham no compensation for the use of such cars is received. When on foreign lines in line-haul service some carriers pay mileage, others pay per diem. Freight cars of other railroads are not employed in local service except in isolated instances. At the close of 1925, 16 locomotives were in service.

Settlements with connecting carriers are now made on a modified demurrage basis with three days' free time for the use of foreign freight cars. It sought the establishment of a per diem basis with

reclaims, in lieu of the demurrage basis with two days' free time which was then in force. On that question we said:

Under a per diem arrangement with reclaims the Birmingham Southern would collect and retain the current progressive or average demurrage rate, pay the smaller per diem rate, and in addition collect any reclaims allowed. Detention of cars by nonproprietary industries would mean a gain in demurrage revenue offset only by the charge for per diem. Instead of the 48 hours' free time accorded other shippers the proprietary industries would in effect have from three to four days' free time, the possession of the car by complainant not being charged against the industry. Even when a car was detained beyond the maximum reclaim period the proprietary industry would merely pay demurrage via its subsidiary corporation back into its own treasury. That industry in effect would be placed on a per diem basis, and freed from the progressive or average demurrage charges.

Under the demurrage plan of the *Northampton & Bath R. R. Co. Case, supra*, modified, complainant, though directly responsible to the trunk lines for demurrage, would sustain no loss for charges for the use or detention of a car when it moved the car without delay, for it would collect demurrage from the industries and would receive one day free time for the movement of the car, but it would suffer a penalty when it consumed in the movement of the car more than the one day allowed for that purpose. Thereby a real incentive for prompt movement of cars would be created, and there would be an actual penalty against both the proprietary and nonproprietary industries as well as the Birmingham Southern. This basis of settlement, however, makes no provision for an average demurrage agreement.

It is apparent that some arrangement other than that now in effect should be made with respect to the detention of cars by the Birmingham Southern and the industries on its line; that such arrangement should make possible the continuance of existing average demurrage agreements; and that it should not take the form of per diem with switching reclaims. * * *

We find that the denial of per diem reclaims to the Birmingham Southern on foreign cars handled under divisions of joint rates is not shown to have been, or to be, unreasonable or unduly prejudicial. We find further that the assessment of demurrage under the uniform demurrage code against the Birmingham Southern was, is, and for the future will be, unreasonable; and that the Birmingham Southern and the defendant trunk lines connecting with the Birmingham Southern shall establish rules in accordance with the provisions of appendix C of the United States Railroad Administration's Circular CS-59. * * *

In the year 1925 a total of 31,334 loads were interchanged which were handled in terminal-switching service. The cars containing these shipments were on line an average of 2.3 days per load. During the same year 31,304 loads were handled in line-haul service, the average detention being 4.4 days per load. Car-hire expense in 1925 amounted to $13,972 and consisted of $7,542 at $5 per day, $6,430 at $2 per day. Had the per diem basis been in force its additional car-hire expense would have approximated $124,000.

The Birmingham Southern is not entirely satisfied with the present method of settlement. A witness testified that when a foreign car

seven; freight cars owned have been reduced through retirements from 158 to 70. Cars now in service are ample to handle traffic which is local to the Pullman. No foreign freight cars are employed in local service. It would be a violation of the car-service rules for the Pullman to load one of its cars outbound to a point outside the Chicago switching limits. This prohibition is covered by an A. R. A. rule effective July 1, 1926, which provides that a switching railroad should not load its own equipment in switching service when such loading is for movement via a road-haul connection if such road-haul connection is able to promptly furnish suitable cars. The proprietary industry owns and uses approximately 100 freight cars, while another industry served by the Pullman has 5 box cars in service. The volume of traffic handled by the Pullman fluctuates considerably. Engine hours worked aggregated 11,366 in 1922, 15,032 in 1923, 13,265 in 1924, 12,339 in 1925, and 11,656 in 1926. The ratio of operating expenses to operating revenues was 60.9 in 1921, 55.3 in 1922, 70.1 in 1923, 83.5 in 1924, 80.5 in 1925, and 84.8 in 1926.

The Pullman is controlled through stock ownership by the Pullman Car & Manufacturing Company. Less than one-half of the aggregate traffic is for the proprietary industry.

Thirteen industries and five team tracks are served by the Pullman. Team-track business is relatively small in quantity. Interchange traffic amounted to 25,558 loads in 1924, 24,027 in 1925, and 22,387 in 1926, a total of 71,972 loads. Of the 3-year total, 64.1 per cent was inbound. The cars containing such traffic were on line an average of 3.82 days in 1924, 3.86 in 1925, 4.02 in 1926, and for the 3-year period an average of 3.89 and an aggregate of 280,620 car days. The greater detention in 1926 as compared with 1925 and 1924 is attributed to longer hauls resulting from elevation of tracks and a change in the location of an interchange yard. Interterminal traffic during the 3-year period amounted to 20,002 loads, or 27.8 per cent of all loads interchanged. The actual number of days these cars were employed in interterminal service was not shown. A check was made of four seasonal months in 1925, at which period the average detention for interterminal cars was 3.07, other cars 3.35, all cars 3.26. Based on the relative detention during four months of 1925 the average detention on interterminal cars in the 3-year period is estimated at 3.66 days per car or an aggregate of 73,200 car days. That of cars in other interchange service is estimated at an average of 3.99 days with an aggregate detention of 207,420 car days. During four seasonal months of 1925, shippers and consignees served by the Pullman held cars an average of 2.138 days per load, and the Pullman required an average of 1.124 days to handle cars between interchange points and points

of placement with such shippers and consignees. These figures include Sundays and holidays. Car hire paid by the Pullman to connecting carriers amounted to $940 in 1924, $1,822 in 1925, and $1,124 in 1926.

The national car-demurrage rules are applied and industries served make settlements under the average agreement. Demurrage collected by the Pullman from shippers and consignees during 1924, 1925, and 1926 aggregated $8,569, but $12,975 was expended in policing demurrage cars and collecting the amounts which accrued. This latter item is made up principally of salaries of clerks. Each car that is placed for a shipper or consignee must be checked each day. A record is made, reports are filed with the auditor, and at the end of each month detailed statements are prepared respecting debits accrued, credits earned, and amounts due by various shippers. The daily labor of checking cars on hand must be performed whether demurrage does or does not accrue.

Under existing rules the Pullman is allowed four days' free time on all cars interchanged. A witness for the A. R. A. testified that if the Pullman settled on a per diem basis, it, like other carriers, would be obliged to bear the per diem which accrues on foreign cars when employed in interterminal switching, the amount of which has been estimated at $73,200 for the 3-year period 1924 to 1926, but this contention is misleading. The record discloses that connecting carriers receive a larger proportion of the interterminal switching revenue than the Pullman and that the Pullman's division does not contain any allowance for car-hire expense. The division sheet reads as follows:

> The allowances provided herein to the terminal carriers are divisions of freight charges only and have no bearing on per diem reclaim allowances. Per diem reclaim rules apply in connection with operating department rules aside from and independent of divisions shown herein.

The car-hire situation of the Pullman can be more clearly understood by tracing its historical development in connection with its share of the switching rates. Prior to 1912 the Pullman made settlements for the use and detention of freight cars on a demurrage basis with four days' free time. Both interline and local traffic were then handled under local tariff rates. Effective September 12, 1912, the Pullman was placed on a per diem basis. It reported per diem accruals direct to car owners and was accorded a reclaim by connecting carriers of five days per car on both terminal and interterminal traffic. At about the same date it became a party to certain tariffs issued by the trunk lines at Chicago and received an allowance equal to its local rate. The switching rate for a two-line haul was $9 for a minimum car of 60,000 pounds, and the Pullman was

allowed a division of $3 per car regardless of size or weight. The Chicago switching-reclaim rules then carried the following provision:

A road loading a car from a point in the switching limits to a point in the switching limits stands in the relation of a carrier road to the terminal switching road and to the intermediate switching road or roads.

Conforming to this rule the carrier which originated interterminal traffic paid a reclaim to the destination carrier. If an interterminal car was unloaded on the Pullman the latter billed the originating carrier for an amount equal to five days per diem. If the car originated on the Pullman it paid the reclaim of the destination carrier, but in such instance the Pullman received out of the switching rate an additional allowance, it being understood that the $3 arbitrary would be net to the Pullman.

In November, 1915, the A. R. A. adopted a rule which provided that no reclaim should be allowed on interterminal switching movements. Between that period and January 1, 1916, the Chicago switching-reclaim rules were amended by abolition of such reclaims and the division sheets issued in connection with Chicago switching rates were amended by canceling the special allowance to the Pullman on interterminal cars originated by that road. At that time the interterminal switching rate for a two-line haul was $9 per car, minimum 60,000 pounds, out of which the Pullman received $3 per car regardless of weight. The trunk lines or belt-line roads received the balance. If the car weighed in excess of 60,000 pounds, the excess revenue accrued to the other switching railroad. On a 3-line switching movement the revenue was then $12 per car, minimum weight 60,000 pounds, out of which the Pullman received $3 regardless of weight, the intermediate carrier received $3, the originating carrier the balance.

When the $3 arbitrary allowed the Pullman was fixed it was understood that this amount would be net after payment of per diem expense, and several times during 1916 and 1917 this matter was brought to the attention of the Chicago switching committee, which committee fixes divisions of switching rates, and to the attention of the General Superintendents' Association, which establishes reclaim rules for the Chicago district. The Pullman was advised by the switching committee that the matter was a transportation problem to be handled with that department and by the superintendents' association was informed the question was a traffic matter to be handled with the switching committee.

The switching rates were increased by the director general in 1918, further increased in 1920, and reduced in 1922. The existing switching rate on a 60,000-pound car is $15 for a two-line haul, $18 for a

three-line haul. On interterminal traffic handled by the Pullman and the Belt Railway of Chicago the latter now receives $10.05, the Pullman $4.95. On a similar car handled, for example, by the Burlington, Belt, and Pullman, the Burlington receives $8.55, the Belt $4.50 for an intermediate movement, the Pullman $4.95. The existing rules for car-hire settlement became effective July 1, 1923, and the Pullman contends that the free time of four days which is allowed on interterminal cars takes the place of the reclaim it formerly received. Immediately prior to July 1, 1923, the Pullman reclaim was $3.96. The Belt Railway of Chicago, a switching road, acts as an intermediate carrier between the Pullman and several trunk lines. In connection with line-haul traffic, which is handled by the Belt as an intermediate road, and delivered to the Pullman for handling in terminal-switching service, the Belt pays the per diem while cars are on the lines of the Pullman. Since July 1, 1923, the line-haul carrier has allowed the Belt a reclaim of $3.96 to reimburse it for per diem paid on cars delivered to the Pullman.

Net railway operating income amounted to $11,740 in 1923, $8,073 in 1924, $18,300 in 1925, and $11,242 in 1926. The latter figure represents a return of 1.1 per cent on book investment.

The Pullman is satisfied to continue settlements on the existing modified demurrage basis; on a per diem basis provided it is either allowed a reclaim on interterminal traffic or is permitted to share the switching revenues on equal terms with other carriers; or it is willing to pay straight per diem without reclaims on either terminal or interterminal traffic provided its proportion of the switching revenue is increased by an amount sufficient to offset the per diem expense. As between the per diem basis with reclaims, or a per diem basis with increased switching revenues and without reclaims, it prefers the latter, because it would avoid the expense of making reclaims, checking reclaims, and the accounting and auditing expense incident thereto.

NO. 4181, I. AND S. NO. 414, CHICAGO SHORT LINE RAILWAY

The Chicago Short Line Railway, herein called the Short Line, concurs in general with the position of the Pullman. The Short Line is a common-carrier terminal railroad within the switching district of Chicago. It operates 22.91 miles of main-line track, 6.09 miles of yards and sidings, and interchanges freight cars with 15 different railroads. Cars are handled through five interchange yards. Since July 1, 1923, it has made car-hire settlements on a modified demurrage basis with four days' free time on each load interchanged, as prescribed in *Lake Erie & Fort Wayne R. R. Co.*, 63 I. C. C. 122,

and as modified in 78 I. C. C. 475. In the calendar year 1925 it paid $8,517 in detention charges. Immediately prior to July 1, 1923, it settled on a per diem basis and received a per diem reclaim of 3.62 days per load handled in terminal-switching service. In the 12 months ended June 30, 1923, it paid $163,769 in per diem, of which $103,373 was refunded by connecting carriers.

In *Lake Erie & Fort Wayne R. R. Co., supra*, we found that outstanding capital stock amounted to 3,988 shares, of which 1,000 shares were held by the By-Products Coke Corporation, a regular shipper over the Short Line, and 837 shares were the property of the Semet Solvay Company, an occasional shipper. A witness testified that the Short Line stands substantially in the same position now as at the previous hearing. On July 1, 1923, it owned 12 locomotives and 141 freight cars. At the close of 1925, 12 locomotives and 140 freight cars were in service.

During four seasonal months of 1925 the Short Line handled 9,336 cars in terminal-switching service which were on line an average of 2.52 days per car; in the four corresponding months of 1922 immediately preceding the establishment of the existing basis of settlement the average was 2.2 days per car. Its reclaim at that time was 3.62 days per car. The national car-demurrage rules are applied against shippers and consignees.

For terminal and interterminal switching service the Short Line receives the same switching revenue per car as the Pullman, which subject was discussed at length in the report concerning that company. The Short Line contends that as a common carrier it is entitled to all the rights and privileges of a common carrier.

NO. 4181, I. AND S. NO. 414, ILLINOIS NORTHERN RAILWAY

The Illinois Northern, a common-carrier terminal railroad, operates 6.95 miles of main line, 22.35 miles of yards and sidings, total 29.3 miles, within one of the most congested industrial areas in the switching district of Chicago, and interchanges traffic with 15 railroads. It engages in terminal, interterminal, substation, trap car, intermediate, and local services and maintains a universal freight house for handling less-than-carload merchandise which moves from or to other Chicago railroads. Its lines are crossed at grade by seven systems of tracks, over which 19 railroads operate. Intersections are protected by interlockers. Livestock and passenger trains are given preference over switch trains at track intersections. The Illinois Northern reaches nine interchange yards and maintains four public team tracks. It has two classification yards, one with a capacity of 250 cars, the other 450. These yards

are sometimes used for the storage of cars which are held under constructive placement. The length of haul varies from 0.25 mile to 7 miles. For the use and detention of foreign railroad-owned freight cars when on its lines, the Illinois Northern settles with connecting carriers on a modified demurrage basis with four days' free time on each loaded car interchanged, as prescribed in *Illinois Northern Ry.*, 61 I. C. C. 629, and as modified in *Lake Erie & Fort Wayne R. R. Co., supra.* Prior to this decision it was a subscriber to the per diem agreement. The existing basis of settlement became effective July 1, 1923. Since that time locomotives owned by the Illinois Northern have been increased in number from 7 to 8, freight cars from 64 to 69. These freight cars are interchanged. The Barrett Company, an industry served, owns a large number of tank cars. In the year 1925 the Illinois Northern owned one interchange car for each 1,207 loads switched, as compared with one car owned by the Belt Railway of Chicago for each 2,138 loads handled, 891 by the Indiana Harbor Belt, and 473 by the B. & O. C. T.

Capital stock of the Illinois Northern amounting to $500,000 is held for the benefit of the International Harvester Company, an industry served which furnished about 22.7 per cent of the aggregate traffic in the 5-year period ended June 30, 1925. The percentage was 46.4 in 1907, 32.4 in 1918, and 21.8 in 1925. Traffic is also handled for about 45 other industries which take delivery on private sidings. Four of its largest spur-track industries, as well as team-track shippers, are served competitively by other railroads. In the aggregate the Illinois Northern handles traffic for more than 2,900 shippers. Industry tracks are switched at least once each 24 hours and oftener if required.

Interline traffic amounted to 64,117 loaded cars in 1924 and 77,218 in 1925. Of the latter, 16,204 or 21 per cent were handled by the Illinois Northern in intermediate switching service, 9,978 or 12.9 per cent were interterminal cars of which about two-thirds were inbound; 51,036 or 66.1 per cent were handled by connecting carriers in road-haul service and by the Illinois Northern in terminal-switching, substation, or trap-car service. Substation and trap car contain freight which passes through freight houses of connecting carriers before line-haul movement if outbound and before delivery to the Illinois Northern if inbound. Terminal-switching loads in 1925 amounted to 36,515, substation and trap cars 14,521.

Cars handled in terminal and interterminal switching service were on the Illinois Northern an average of 3.06 days per load in 1925, 3.27 in 1924, and 3.66 days during the last half of 1923. A check of

four seasonal months in 1925, excluding Sundays and holidays, disclosed that the average detention to terminal switch cars was 2.68 days, interterminal cars 2.72, substation and trap cars 1.59, intermediate cars 0.27.

The national car-demurrage rules are applied against industries. During four seasonal months of 1925 the controlling industry held cars an average of 1.51 days, other industries 1.66. These figures apparently exclude Sundays and holidays. Demurrage collections aggregated $6,103 in 1924 and $5,944 in 1925. In those two years $360 was paid by the controlling industry. The expense of policing demurrage cars and collecting amounts accrued, plus assessments of $19.25 per month which are paid to the Western Weighing & Inspection Bureau for supervision, exceeds $2,600 per year. If demurrage accruals are not voluntarily paid by shippers, expense is incurred in litigation to enforce payment.

In 1917 and 1918 the Illinois Northern made settlements for the use and detention of foreign freight cars on a per diem basis and was allowed a 5-day reclaim on cars in terminal-switching service; a check had shown the average detention to be 4.14 days per car. Fractions were then disregarded in fixing reclaim allowances. From January 1, 1919, to August, 1920, its reclaim was 3.65 days; from September, 1920, to June 30, 1923, the figure was 3.93 days. From August, 1920, to June 30, 1923, a reclaim of 2.5 days was received on substation and trap cars. Since establishment of the existing basis of settlement effective July 1, 1923, intermediate switching roads have been allowed a reclaim of 3.93 days per load on line-haul cars received from or delivered to the Illinois Northern.

Car hire paid by the Illinois Northern to connecting carriers amounted to $1,150 in the last half of 1923, $1,538 in the calendar year 1924, and $1,878 in 1925. No mileage is paid on private-line equipment. The A. R. A. contends that if the per diem rules had been in force the Illinois Northern would have paid straight per diem at $1 per car day on cars in interterminal service, the detention on which is estimated at 23,920 days in 1924 and 30,532 days in 1925. This contention is misleading, for reasons which are set forth in our discussion of a similar contention concerning the Pullman.

Prior to July 1, 1923, the Illinois Northern was in approximately the same situation respecting reclaims and divisions of switching rates as the Pullman. The history and relation of reclaims to switching revenues was outlined at length in the report herein pertaining to the Pullman and will not be repeated here. Effective July 1, 1924, the Illinois Northern division of the switching rate was increased to $6.40 for a minimum car of 60,000 pounds. For

a two-line interterminal haul the minimum switching rate is $15. The Illinois Northern receives $6.40 and its connecting carrier $8.60. For a three-line haul the minimum rate is $18. The Illinois Northern receives $6.40, the intermediate carrier 1 cent per hundred pounds or fraction, or $6 per minimum car, the other carrier the balance, or $5.60. As between trunk and belt lines the originating and destination carrier each receives 37.5 per cent, or $6.75, and the intermediate line 25 per cent, or $4.50. When acting as an intermediate carrier the Illinois Northern receives $3.60 for a loaded car, $1.80 for an empty.

The Illinois Northern believes that the existing rules are reasonable and nondiscriminatory, but does not object to restoration of the per diem system, provided it is allowed a reclaim on interterminal cars, or in lieu of reclaim is permitted to share the switching revenues on equal terms with other carriers.

NO. 4181, I. AND S. NO. 414, MANUFACTURERS JUNCTION RAILWAY.

The Manufacturers Junction, a common-carrier terminal railroad, operates 1.86 miles of main line, 13.92 miles of yards and sidings within the switching district of Chicago and interchanges traffic either direct or through intermediate switching roads with all railroad carriers which operate into the Chicago switching district. Outstanding capital stock at the close of 1925 amounted to 5,000 shares, par value $100, of which 4,991 shares were held by the Western Electric Company, the principal industry served. Since July 1, 1923, the Manufacturers Junction has made car-hire settlements on a modified demurrage basis with four days' free time on each load interchanged, as prescribed in *Lake Erie & Fort Wayne R. R. Co., supra.* In the calendar year 1925 it paid $447 in detention charges. Prior to July 1, 1923, it paid per diem and reclaimed $3.87 per load on cars handled in terminal-switching service and $2.50 per load on trap cars. In the 12 months ended June 30, 1923, the Manufacturers Junction paid $105,748 in per diem, of which $95,565 was refunded in reclaims by connecting carriers. The Manufacturers Junction filed a petition for a rehearing, praying for reestablishment of the per diem system, which was denied. It now asks that it be allowed to make car-hire settlements in the manner prescribed by the per diem rules.

There has been no material change since July 1, 1923, in methods of operation or industries served by the Manufacturers Junction. Freight-carrying cars owned have increased in number from 41 to 49. The Manufacturers Junction now serves about 250 shippers or consignees exclusive of concerns connected with the Western Electric

Company. In May, 1927, traffic of the controlling industry comprised 57.2 per cent of the total. A witness testified that no abnormal operating periods, such as severe car shortages or extreme weather conditions, have been encountered since establishment of the existing basis of settlement and hence it has not been subjected to a thorough test. The national car-demurrage rules are applied against industries served. Foreign freight cars are sometimes used in local service. For terminal and interterminal switching service the Manufacturers Junction is allowed the same revenue per car as the Pullman, which subject is discussed at length in the report concerning that company.

The Manufacturers Junction seeks restoration of the per diem basis of settlement irrespective of whether or not its allowance of the switching revenue on interterminal cars is increased.

In the case of each of the four roads last mentioned, upon further hearing we increased from three to four days the free time allowed for each load interchanged, *Lake Erie & Fort Wayne R. R. Co.*, 78 I. C. C. 475, and said at page 493:

> These cases present an administrative question of great complexity which demands a practical solution, the best way of securing which is to put the rules which we have prescribed, as modified herein, into effect on the lines involved, and give them a fair trial. Nothing in this report shall be taken as precluding any interested party, after such fair trial has been given the rules, from applying for modification of the rules in the light of actual experience.

NO. 4181, I. AND S. NO. 414, GENESEE & WYOMING RAILROAD

The Genesee & Wyoming, hereinafter termed the Genesee, operates 17.52 miles of main track, and 8.84 miles of yards and sidings in the State of New York, and interchanges traffic with the B., R. & P., Lackawanna, Erie, Lehigh Valley, New York Central, and Pennsylvania. Freight-car interchange points are located at Caledonia, Pittsburgh & Lehigh Junction, Greigsville, and Retsof Junction. The Genesee was incorporated March 22, 1899. A report filed by the Genesee in this proceeding in response to our questionnaire indicates that the Genesee is not at present owned or controlled in whole or in part, directly or indirectly, by individuals or industries served. In *Genesee & Wyoming R. R. Co.*, 62 I. C. C. 680, decided June 11, 1921, we said:

> At the time of the hearing, in 1914, 2,887 out of the 5,000 Genesee shares were owned by stockholders of the International Salt Company, which owns the Retsof Mining Company, the principal industry served by the Genesee. The president of the salt company was also president of the Genesee and owned 2,055 of its shares. His salary from the railroad was $5,000, but he devoted very little of his time to its business.

It owns six locomotives, but no freight cars. Traffic consists chiefly of mineral salt, commonly called rock salt, which is mined, screened, and prepared for shipment in much the same manner as anthracite coal. More than 95 per cent of freight cars received for loading salt are cleaned and coopered by the Genesee. The expense incurred in cleaning and coopering amounted to $5,752 in 1925 and $4,573 in 1926. When cars are received by the Genesee from one carrier and delivered to another carrier, junction cards are sent by mail to both railroads. Such cards give the name of the carrier from which the car was received, the carrier to which delivered, and date and hour of delivery, and indicate whether loaded or empty. The service performed by the Genesee is line haul.

Prior to 1902 the Genesee settled for the use of foreign freight cars on a mileage basis. From 1902 to 1918 mileage was paid on cars of direct connections and per diem for cars owned by other railroads. From 1918 to 1921 per diem without free time or reclaim was paid on all railroad-owned freight cars. Since the latter date the Genesee has made settlements with connecting lines on a modified demurrage basis with three days' free time as prescribed in *Genesee & Wyoming R. R. Co., supra.* In the year 1926 a total of 20,123 cars were interchanged which were on line 54,721 car days, an average of 2.7 days per car. Demurrage collected from shippers amounted to $537. The average detention of freight cars on the Genesee during March, June, September, and December, immediately preceding the adoption of the modified demurrage basis, as compared with detention during the same months of 1925, is set forth in the subjoined table.

	Average detention per car			Average detention per car	
	1924	1925		1924	1925
	Days	Days		Days	Days
March	3.8	2.8	September	2.9	2.4
June	2.1	2.3	December	3.7	2.6

The Genesee participates in joint rates on all interline freight traffic. In *Genesee & Wyoming R. R. Co., supra,* we made the following comments respecting rates and divisions:

> We find that the Genesee is a common carrier subject to the interstate commerce act and may lawfully participate in joint interstate rates with its trunk line connections and receive divisions therefrom. The present record does not afford a basis for stating the amounts which it may properly receive; but the divisions must not be more than are reasonable. In arriving at divisions to be paid to the Genesee the trunk lines should take into consideration what would be a reasonable rental for the property leased from

is undergoing repairs on its line the Birmingham Southern must pay demurrage charges of $2 or $5 per day, even though it may be necessary to order repair material from the owner; that car movement is expedited to avoid accrual of debits under the modified demurrage rules in force, with the result that cars of the same class are cross hauled, i. e., to avoid payment of penalty charges; cars may be returned empty to-day to foreign lines although equipment of the same class will be required for loading to-morrow or the day after. The Birmingham Southern suggests that it be allowed to make car-hire settlements on a per diem basis and that reclaims be authorized on cars in terminal-switching service. Settlements on a per diem basis in 1925, with reclaims on cars in terminal switching but without a change in divisions on line-haul shipments, would apparently have reduced its net railway operating income from $136,046 to some $12,000.

In the year 1925 the Birmingham Southern collected $7,626 in demurrage from shippers and consignees. It paid connecting carriers $13,972, an excess of $6,346 over collections. Foreign freight cars handled in terminal-switching service were on line 71,766 car days, those in line-haul service 138,249 car days. Had it been a subscriber to the per diem agreement, reclaims would probably have absorbed all or most of the car-hire expense on foreign equipment in switching service. Reclaims would have been received on foreign cars in switching service whether or not demurrage accrued. Reclaims would also have been collected on its own cars while on its own line in terminal-switching service.

Divisions of through rates accruing to the Birmingham Southern on cars in line-haul service, it is contended, contain no allowance for car-hire expense, and it is also contended that if per diem were paid, such divisions would obviously need to be increased. If that were done sufficiently to offset the car-hire expense, the Birmingham Southern would profit by the per diem method to the extent that detention charges are now paid to connecting carriers. Under the per diem system it would also receive $1 per day in all cases for use of its cars when on foreign lines. Some carriers now pay mileage in accordance with A. R. A. recommendations. The question of divisions is not here in issue.

The Birmingham Southern decision has been generally followed in subsequent cases involving car-hire settlements with industrial common carriers, and is recognized as a leading case. The rule there prescribed differs from and is much more liberal to the industrial railroad than that fixed by us in *Northampton & Bath, supra*. Each of these two roads is allowed three working days' free time per load

interchanged, but the Northampton & Bath remits all demurrage collected from industries to connecting carriers, and in making settlements for detention in excess of three days each car is dealt with separately and no additional free time is allowed for Sundays and holidays. The Birmingham Southern retains demurrage collections and merely makes settlement with connecting carriers for detention in excess of three days, the average agreement is applied, and additional free time is allowed for Sundays and holidays. If the Northampton & Bath holds a car four week days and collects $2 demurrage from an industry served, it pays to connecting carriers the $2 collected and in addition another $2 for holding the car in excess of three days. In a similar case the most that the Birmingham Southern would pay would be $2 for holding the car more than three days; in many instances, it would pay nothing for under the average agreement it has the privilege of canceling the amount it owes connecting lines by a credit earned by another car released in less than three days, and if this were done it would retain the demurrage collected from the shipper and pay nothing to connecting carriers.

NO. 4181, I. AND S. NO. 414, PULLMAN RAILROAD COMPANY

The Pullman Railroad, a common carrier of freight, operates 9.40 miles of main-line track, 13.88 miles of other tracks, total 23.28 miles, within the switching district of Chicago, and performs terminal, substation, trap car, interterminal, intermediate, and local switching service. It interchanges traffic direct with 12 railroads and through an intermediate switching line (Belt Railway of Chicago) with 23 others. For the use and detention of foreign railroad-owned freight cars when on the lines of the Pullman it makes settlement with connecting carriers on a modified demurrage basis with four days' free time on each loaded car interchanged, as prescribed by us in *Pullman R. R. Co.*, 61 I. C. C. 637, and as modified in *Lake Erie & Fort Wayne R. R. Co.*, 78 I. C. C. 475.

The existing basis of car-hire settlement was made effective July 1, 1923, and had been in force a little more than four years when the initial hearing in this proceeding was held in July, 1927. Due to elevation of railroad tracks in certain portions of Chicago and the resulting change in location of an interchange yard the haul of the Pullman has been increased since the prior decisions from an average of 3.35 and 3.24 to approximately 4.85 and 4.74 miles, respectively. Aside from this and the use of an additional interchange yard, there has been no material change in the physical operation of the Pullman. The number of locomotives owned has increased from six to

Details concerning operations of the McKeesport are contained in that report.

For the use of foreign freight cars the McKeesport makes settlements with connecting carriers on a modified demurrage basis with three days' free time as prescribed in the case last cited, and in 1925 paid such carriers $237. Prior to the effective date of that method of settlement, it paid per diem and received a reclaim of four days per car. In the calendar year 1925 a total of 93,208 loads were interchanged. The cars containing such shipments were on the McKeesport 231,030 car days, or an average of 2.47 days per car. The national car-demurrage rules are applied and the average agreement is extended to the three industries served. Under this agreement cars loaded either inbound or outbound may be held as long as seven days without payment of demurrage, as debits which accrue on one car may be canceled by credits earned on other cars.

The McKeesport is not a party to joint rates. Traffic is handled under switching charges which are absorbed by trunk-line carriers. The net railway operating deficit was $36,576 in 1925 and $12,125 in 1926.

The McKeesport is satisfied to make settlements on the existing basis or would be willing to pay per diem if a reclaim is allowed which is sufficient to offset per diem expense. If the per diem basis is reestablished the McKeesport asks that a reclaim of at least three days be authorized to provide 24 hours for the movement of cars between interchange points with connecting carriers and points of placement with shippers or consignees.

NO. 4181, I. AND S. NO. 414, BAY TERMINAL RAILROAD

The Bay Terminal operates 1.79 miles of main track and 3.75 miles of yards and sidings within the switching district of Toledo, Ohio, and interchanges traffic at or near that point with the New York Central, Wheeling & Lake Erie, and Toledo Terminal. The service performed is exclusively terminal switching. The Bay Terminal is controlled by majority stockholders of the Sun Oil Company, which operates an oil refinery on its line. Two locomotives are owned, also 360 tank cars which are interchanged and are settled for by foreign lines on a per diem basis. These cars are employed largely, but not exclusively, for transporting products of the Sun Oil Company. The latter concern owns about 1,000 cars which are operated on a mileage basis.

The Bay Terminal makes settlements for the use of foreign freight cars on a modified demurrage basis with three days' free time as prescribed in *Lake Erie & Fort Wayne R. R. Co.*, *supra*, and in the year

1925 paid connecting carriers a total of $10 which represents two days' detention charges at $5 per car day. In that report we made the following statements of fact on page 490 concerning car-hire settlements in the past:

> For about a year prior to 1914 per diem with a straight four-day free time was in effect as to cars delivered to the Bay Terminal by the Wheeling & Lake Erie. Then followed a period of no car-hire payments. In 1918 per diem without reclaim was established with the Toledo Terminal Railroad. In 1921 the past car-hire account with the New York Central and Wheeling & Lake Erie was settled on the basis of per diem with four-day free time, and the Bay Terminal was admitted to membership in the American Railroad Association. No reclaim period has been determined, but the Bay Terminal claims a four-day period.

In 1925 the Bay Terminal received $80,910 per diem for the use of freight cars owned when on foreign lines. During the months of March, June, September, and December, 1925, the Bay Terminal interchanged 710 loads and the cars containing such shipments were on line 1,335 days, an average of 1.9 days per carload. In the same months of 1922, the year which preceded the establishment of existing basis of settlement, it interchanged 642 loads which were on line 1,314 days, an average of two days per load. Additional accounting expense has been incurred since adoption of the modified demurrage basis because of settlements for foreign cars on a demurrage basis and the receipt of per diem on its own cars.

The Bay Terminal does not participate in through rates. Interchange traffic is handled on a switching charge. A witness testified that the Bay Terminal would prefer to make settlements for the use of foreign freight cars on a per diem basis provided connecting carriers will refund the per diem it pays to car owners, but if such refund is not authorized, it desires to continue under the present arrangement.

NO. 4181, I. AND S. NO. 414, LAKE ERIE & FORT WAYNE RAILROAD

The Lake Erie & Fort Wayne, hereinafter called the Fort Wayne, operates 0.5 mile of main track and 3.04 miles of yards and sidings within the city of Fort Wayne, Ind., and at that point interchanges traffic directly with the Pennsylvania, New York Central, and Nickel Plate, and through the latter road with the Wabash. The service performed is terminal switching, a tariff charge of $3.60 per carload is collected, of which the trunk-line carriers absorb $2.70. In the same city a switching line is operated by the Fort Wayne Union Belt which assesses a switching charge of 1 cent per 100 pounds,

minimum $6 per car, and line-haul carriers absorb all of such switching rate. One locomotive is owned but no freight cars.

Operation of the Fort Wayne began in 1904. About 1903 a rolling-mill company was induced to establish a plant within the city, citizens subscribed to its capital stock and incorporated the Fort Wayne to serve the mill and to promote industrial development. The rolling-mill company and the Fort Wayne have many stockholders in common. No railroad stock is owned by the mill nor is mill stock held by the Fort Wayne. Officers of the Fort Wayne receive no compensation for their services. In the calendar year 1925 the Fort Wayne handled 4,100 loads of interchange freight, of which 64 per cent were for the rolling mill, 31 per cent for six other industries, 5 per cent for miscellaneous shippers and receivers of freight. Approximately 6 per cent of these cars were moved locally within plants to complete loading or unloading, for which service an additional charge of $1.50 per car was collected. In the year 1926 a fertilizer plant furnished 27 per cent of the freight traffic. The average detention in that year was 2.14 days per car interchanged.

Since July 1, 1923, the Fort Wayne has made settlements with direct connections for the use of freight cars on a modified demurrage basis with three days' free time, as prescribed in *Lake Erie & Fort Wayne R. R. Co.*, *supra*. Prior to that decision no car hire was paid, and demurrage was assessed by connecting carriers directly against industries on rails of the Fort Wayne. In 1925 the Fort Wayne paid connecting carriers $127, of which $125 represented detention charges at $5 per car day. Demurrage collections from shippers and consignees amounted to $435. In February, 1927, communications were addressed to trunk-line connections, inquiring whether they were in any way opposed to the present basis of settlement, the replies to which were filed in the record. No objection was voiced by either connecting carrier.

The Fort Wayne does not participate in joint rates. Its gross freight earnings in 1926 averaged $1.678 per car day. Net railway operating deficit amounted to $6,461 in 1923, $6,224 in 1924, and $868 in 1925. It is estimated that the establishment of the per diem basis of settlement with reclaims, in lieu of the present system, would increase accounting expense by $2,000 per year, due to the necessity of making reports to and settlements with numerous car owners throughout the country and then rendering bills against connecting carriers in order to obtain a refund of the amounts paid to individual car owners. The Fort Wayne is satisfied with the existing method of car-hire settlement.

NO. 4181, I. AND S. NO. 414, LAKESIDE & MARBLEHEAD RAILROAD, TIONESTA VALLEY RAILWAY, VALLEY RAILROAD (PA.)

No evidence was introduced by the Lakeside & Marblehead Railroad, Tionesta Valley, or Valley Railroad (of Pennsylvania), each of which makes car-hire settlements on a modified demurrage basis pursuant to orders issued by us, but answers to a questionnaire required by our order were filed by each of such carriers except the Valley Railroad, which failed to respond.

NO. 13614, MOSHASSUCK VALLEY RAILROAD *v.* NEW YORK, NEW HAVEN & HARTFORD RAILROAD

The Moshassuck Valley is an industrial common-carrier railroad handling freight only. It was incorporated January 11, 1874, in the State of Rhode Island and operates 2.23 miles of main track and 2.94 miles of yard tracks and sidings at Woodlawn, R. I. It interchanges traffic at that point with the New Haven Railroad, its only rail connection. Capital stock amounts to $250,000. Details concerning stock ownership appear in *Moshassuck Valley R. R. Co.* v. *N. Y., N. H. & H. R. R. Co.*, 69 I. C. C. 368. In that proceeding, the Moshassuck Valley sought increased divisions of freight rates. It was paying straight per diem without free-time allowance. We found that exclusive of per diem expense the prevailing divisions were compensatory, and instead of increasing divisions ordered the establishment of a modified demurrage basis of settlement for car detention, with three days' free time, in lieu of the per diem system, retroactive to September 1, 1920. This plan of settlement had the effect of enhancing net revenues, and is satisfactory to the Moshassuck Valley. Net railway operating revenue aggregated 5.7 per cent of book value in 1922, 6.5 per cent in 1923, 3.8 per cent in 1924, 5.8 per cent in 1925, and 5.2 per cent in 1926. Under the per diem system, with no change in divisions, it would have sustained a deficit in each of such years. The book value is based on valuation fixed by us, plus subsequent additions and less depreciation.

Three locomotives, 28 box cars, and 5 coal cars are owned. These cars transport all local traffic but do not go off the line. The Moshassuck Valley is a party to joint rates and is a party to the national code of demurrage rules. It serves about 100 patrons, 25 of which receive freight regularly throughout the year. There are 22 private sidings and four public team tracks. Approximately 75 per cent of traffic handled is interchange business. Interline traffic approximated 6,860 loads in 1925 and 6,530 loads in 1926. The Moshassuck Valley has never been a subscriber to the per diem agreement. In 1921 an application for admission was filed, but this was withdrawn

after notification that even as a subscriber it would not be entitled to switching reclaims.

Prior to Federal control the Moshassuck Valley paid per diem at current rates. During Federal control and the guaranty period it paid per diem after two days' free time per car. From September 1, 1920, end of guaranty period, to June, 1922, it paid straight per diem, although adjustments were subsequently made to conform with our findings in the divisions case above referred to. Operating records denote an increase in car-handling efficiency since the adoption of the modified demurrage basis. The detention in 1921 under the per diem plan averaged 2.09 days per carload interchanged. In each of the years 1923 and 1924 under the present method the detention averaged 2.03 days per load, a decrease of 2.9 per cent; 1.80 days per car in 1925, a decrease of 13.9 per cent; and 1.90 in 1926, a decrease of 9.1 per cent. The detention fluctuates from month to month. In February, 1926, the average was 2.17 days, in August 1.66. The increased car efficiency is attributed principally to cooperation by shippers and consignees, induced by personal solicitation in which they were urged to release cars quickly and aid the carrier in building up credits to offset debits on cars which could not be returned promptly, and avoid payment of demurrage at $2 per car day. In 1925 debits totaled 36, credits 6,406, detention charges $4. Under the per diem method it is claimed the same measure of cooperation could not be obtained. The records indicate that in the months of March, June, September, and December, 1925, shippers and consignees held cars an average of 1.19 days per load. For the same months during the year immediately preceding the effective date of the present system the average was 1.68 days. Business conditions differed somewhat in the two periods compared. The Moshassuck Valley has also installed some new tracks which facilitate prompt car handlings, and the New Haven has assisted by establishing additional interchange facilities and rearranging interchange schedules. It would be willing to settle on a per diem basis if its divisions were increased by an amount equivalent to the car-hire expense. It asks that no change be made in the present system of settlement unless divisions are also adjusted.

NO. 18118, VALLEY & SILETZ RAILROAD *v.* SOUTHERN PACIFIC COMPANY

The Valley & Siletz, a Class II common carrier in the State of Oregon, hereinafter called the Siletz, interchanges traffic with the Southern Pacific near Independence and from that station extends a distance of 40.6 miles to the stub-end terminus at Valsetz. It also operates 6.33 miles of yards and sidings. Starting from a point near Independence the road passes in a southwesterly direc-

tion through a sparsely settled agricultural district for a distance of some 24 miles to a station designated Hoskins. From this station the line runs northwest a distance of 15 miles to the summit of the Coast Range of mountains, then continues 2 miles beyond the summit to Valsetz. The Siletz has a large number of high trestles and bridges and much track curvature. Between Hoskins and the mountain summit there is a grade of 1.5 per cent for 3 miles, followed immediately by a grade of 3 per cent for another 3 miles. The loaded movement is downgrade.

The Siletz began operations as a common carrier January 1, 1918. Book investment at the close of 1925 amounted to $1,172,816, and at the close of 1926 it was $1,200,355. The property has not been valued by this commission. All capital stock except qualifying shares of directors is held by the Wm. W. Mitchell Company, which concern owns several thousand acres of timber near the western terminus of the railroad. Under exclusive contract rights the Cobbs & Mitchell Company is engaged in cutting this timber. F. J. Cobbs and Chas. T. Mitchell own a major portion of the capital stock of Cobbs & Mitchell and are minority stockholders in the Wm. W. Mitchell Company. In the year 1926, shipments by Cobbs & Mitchell constituted approximately 32 per cent of the aggregate freight traffic. About 98 per cent of the total tonnage was outbound and consisted almost entirely of forest products. In addition to the affiliated industry the Siletz serves some 25 shippers of carload freight. Interline shipments amounted to 6,932 cars in 1925 and 7,289 cars in 1926. Three locomotives and 25 freight cars are operated. These freight cars are ample for and are used exclusively in local service.

For the use of foreign freight cars the Siletz makes settlements with the Southern Pacific on a modified demurrage basis with three days' free time in accordance with our order in *Valley & Siletz R. R. Co.* v. *S. P. Co.*, 80 I. C. C. 724. The Siletz is satisfied with this method of settlement. The average car detention on the Siletz approximates 2.82 days.

The Siletz participates in joint rates on lumber, logs, and cordwood and receives divisions in accordance with the tap-line scale. On hauls of 15 to 45 miles its division varies from 4 to 6 cents per 100 pounds. In 1926 lumber shipments to transcontinental territory amounted to 2,256 cars; to California, Arizona, Nevada, and New Mexico 524; to Oregon points for export 546. Log shipments to Winona, Oreg. amounted to 3,726 cars, and to other points 107. Revenues accruing to the Siletz from outbound interline shipments in 1926 averaged $27.41 per car, and that received by other carriers, $145.65 per car. Net railway operating income was $24,534 in 1923,

$24,833 in 1924, $34,339 in 1925, and $63,259 in 1926, an average of $36,741 per year. Payment of straight per diem during these four years would have reduced this average figure to $18,950 per year. An annual return of 5.75 per cent on the 1926 book investment would amount to $69,020. A witness for the Siletz testified that existing freight divisions would be inadequate were the railroad required to make car-hire settlements on a per diem basis.

NO. 14433, LIME ROCK RAILROAD *v.* MAINE CENTRAL RAILROAD

The Lime Rock, an industrial common-carrier terminal-switching railroad operates 7.32 miles of main track, 5.23 miles of yard tracks and sidings, 1.27 miles under trackage rights, wholly within the State of Maine, and interchanges traffic at Rockland with the Maine Central, its only railroad connection. Capital stock is owned by the Rockland & Rockport Lime Corporation, an industry served. Interline traffic is handled for 18 other shippers and consignees and transported a distance of 1.5 to 3.65 miles. The Lime Rock makes settlement for use and detention of foreign freight cars on its line under a modified demurrage basis, with two days' free time, in conformity with our order in *Lime Rock R. R. Co.* v. *M. C. R. R. Co.*, 102 I. C. C. 48. In the 12 months ended August 31, 1926, debits amounted to 501, credits 2,119, detention charges $21. The national car-demurrage rules are applied against shippers and consignees. The Lime Rock owns 4 locomotives, 493 wooden dump cars, 1 flat car, and 1 snowplow, none of which are interchanged. Several dump cars are leased to the proprietary industry at a rental of $20 each per year, such rentals in 1925 amounting to $1,265.92. Foreign freight cars are used in moving interline traffic but not in local service. In addition to terminal switching of interchange traffic the Lime Rock performs a large amount of interplant and intraplant switching. Railway operating revenues in the calendar year 1925 aggregated $111,598.38, of which $81,025.90 or 72.6 per cent was collected for plant switching for the proprietary industry, $25,877.06 or 23.2 per cent for common-carrier service for this industry, and $4,695.42 or 4.2 per cent for services rendered patrons other than the proprietary industry. The Lime Rock does not participate in through rates, its switching charge is added to the junction rate, and both it and the Maine Central collect their own revenues on interchange traffic. In the 12 months ended August 31, 1926, a total of 3,736 loads were interchanged, of which 3,335 or 89.3 per cent were outbound. Detention of such cars on the Lime Rock totaled 5,644 days and averaged 1.51 days per load. Under the per diem system the preceding 12

months' detention averaged 1.68 days per load, and in the three calendar years ended December 31, 1922, on the per diem basis detention averaged 1.80 days per load.

NO. 16420, VIRGINIA BLUE RIDGE RAILWAY *v.* SOUTHERN RAILWAY COMPANY

Complainant railroad is 18.62 miles in length, and connects at Tye River, Va., with the Southern, its only outlet. In November, 1923, a complaint was filed against the Southern, alleging that the charges exacted under the per diem code and car-service rules for the use and detention of foreign freight cars while on the Virginia Blue Ridge were and are unjust and unreasonable. It sought reparation, and for the future, application of a modified demurrage basis of settlement with four days' free time on each load interchanged. The complaint was dismissed. *Virginia Blue Ridge Ry.* v. *S. Ry. Co.*, 96 I. C. C. 591. Subsequently the case was reopened for further consideration and consolidated with this proceeding. No additional evidence was introduced. The facts pertaining to its operations are set forth in the original report. During Federal control the Virginia Blue Ridge paid per diem after expiration of two days' free time per car interchanged. Forest products constitute about 80 per cent of its tonnage. Joint rates are in effect.

NO. 15517, MOREHEAD & NORTH FORK RAILROAD *v.* CHESAPEAKE & OHIO RAILWAY COMPANY

Complainant, hereinafter called the Morehead line, operates 24.42 miles of main-line railroad between Morehead, Ky., and Redwine, Ky. At Morehead it connects with the C. & O., its only trunk-line connection, and at Redwine with the Lenox Railroad, a line 8 miles in length which has no other outlet. In December, 1923, it filed complaint against the C. & O., alleging that the per diem rate of $1 per car day for use and detention of freight cars subjected it to unjust and unreasonable charges. We were asked to prescribe just and reasonable charges for the future and to require an adjustment on that basis from May 1, 1921. The complaint was dismissed, *Morehead & North Fork R. R. Co.* v. *C. & O. Ry. Co.*, 100 I. C. C. 45. Subsequently the case was reopened for further consideration and consolidated with this proceeding. No additional evidence was introduced. The facts pertaining to its operations appear in the original report.

During Federal control, the Morehead line was allowed two days' free time per car interchanged, after which per diem was paid. Subsequent to Federal control and prior to May 1, 1921, it settled with the C. & O. on a straight demurrage basis with two days' free time

per load handled. Bills have been rendered by the C. & O. since that date on a straight per diem basis, but not paid. The per diem system was established by the C. & O. because of per diem rule 6. In the year 1923 car-hire accruals averaged $2.06 per car on 1,136 units interchanged.

NO. 13757, JEFFERSON & NORTHWESTERN RAILWAY COMPANY *v.* MISSOURI, KANSAS & TEXAS RAILWAY COMPANY

By complaint filed March 1, 1924, the Jefferson & Northwestern sought the establishment of some basis of car-hire settlement other than the straight per diem basis imposed by the M., K. & T., and the T. & P. with which it interchanges traffic at Jefferson, Tex. It then operated about 40 miles of road. The complaint was dismissed: *Jefferson & Northwestern Ry. Co.* v. *M., K. & T. Ry. Co.*, 102 I. C. C. 72. The case was subsequently reopened for further consideration and consolidated with this proceeding, and additional evidence was submitted.

The Jefferson & Northwestern has extended its line and now operates 49 miles of railroad between Jefferson and Naples, Tex., connecting at the latter point with the St. L. S. W. of T. Capital stock of the Jefferson & Northwestern is owned largely by A. B. Clark and F. I. Clark, who are also the owners of the Clark & Boyce Lumber Company, the principal shipper. Both line-haul and terminal-switching services are performed. On some switch traffic the switching charge is $1.80 per car and on some $6. These amounts are absorbed. The average per diem expense on equipment in this service exceeds $2 per car. On interstate line-haul shipments of lumber, it participates in joint rates, and receives the tap-line scale, which varies from $4.05 per car for short hauls to 5.5 cents per 100 pounds for hauls of 45 miles. Additional details concerning operations are set forth in the original report.

During Federal control and the guaranty period, the Jefferson & Northwestern was allowed two days' free time on cars interchanged, after which per diem was paid. From this period to July, 1922, per diem was paid, but reclaims were allowed on cars in terminal-switching service. Since July 1, 1922, straight per diem has been assessed by connecting carriers pursuant to per diem rule 6 (b).

NO. 16473, KOSCIUSKO & SOUTH EASTERN RAILROAD COMPANY *v.* ILLINOIS CENTRAL RAILROAD COMPANY

Complainant, hereinafter called the Kosciusko, operates a railroad within the State of Mississippi. It connects with the Illinois Central at the town of Kosciusko and extends 16 miles to Zama.

Rails are leased from the connecting carrier. By complaint filed October 29, 1924, it attacks as unreasonable the $1 per diem rate which is exacted by the Illinois Central for the use of freight cars, and seeks the establishment of a modified demurrage basis with three days' free time, retroactive to November 1, 1924. A proposed report was issued by the examiner in which it was recommended that the complaint be dismissed. Complainant filed exceptions and defendant answered. Subsequently, the case was consolidated with this proceeding. No additional evidence was introduced. Traffic of the Kosciusko consists chiefly of lumber, the major portion of which is shipped by the proprietary industry, the W. P. Brown & Sons Lumber Company. Two other lumber companies are served. In some instances the Kosciusko receives a division of the joint rate and in addition an arbitrary. In other cases, its local is added to the junction rate.

During Federal control the Kosciusko made settlements on a modified per diem basis with two days' free time per car interchanged. It is now a nonsubscriber and pays straight per diem without free time or reclaim. From July 1 to December 31, 1924, car-hire expense amounted to $3,625, an average of $3.67 per unit on 987 cars. Some demurrage was collected. The average detention prior to July, 1924, under a different management was greater. After deduction of fixed charges, the Kosciusko had a deficit of $2,550 in 1923 and $1,327 in the first 10 months of 1924.

NO. 15697, GREENVILLE & NORTHERN RAILWAY *v.* SOUTHERN RAILWAY COMPANY

Complainant filed a complaint on February 26, 1924, alleging that the charges assessed by the Southern for use of freight cars is unjust and unreasonable. It seeks relief for the future and reparation with respect to charges which accrued on and after January 1, 1924. A proposed report was issued by the examiner May 21, 1925, in which it was recommended that the complaint be dismissed. Complainant filed exceptions. Subsequently the case was consolidated with this proceeding. No additional evidence was submitted.

Complainant owns 23 miles of main-line single track, extending from Greenville, S. C., to River Falls, S. C., also approximately 4 miles of siding and terminal tracks. At Greenville, traffic is interchanged with the Southern, Charleston & Western Carolina, and the Piedmont & Northern. Capital stock is owned by the Saluda Land & Lumber Company, hereinafter called the lumber company, except a few shares held by directors. The lumber company owns in excess of 50,000 acres of timberland adjacent to the railroad. It also owns

the Halite & Northern. The parties should file a complete and specific statement of any arrangements entered into immediately upon their consummation.

Apparently the carriers did not comply with the foregoing directions. The present record discloses that a basis of divisions to be allowed the Genesee was fixed about 1895 and is still in force. No change was made following our decision in the case cited above. The placing of the Genesee on a modified demurrage basis without modifying its freight divisions has (apparently) had the effect of increasing its income by some $50,000 per year. Gross operating revenues aggregated $471,789 in 1925, and $477,870 in 1926. Net railway operating income amounted to $219,463 in 1925, and $199,501 in 1926. The latter figure represents a return of 44.3 per cent on final valuation as of June 30, 1917, and a return of 14.4 per cent on book investment at the close of 1926. An annual return of 5.75 per cent on the 1917 valuation would amount to $25,858, on the 1916 book investment to $79,591. The Genesee is satisfied with the existing basis of car-hire settlement.

NO. 11367, BENWOOD & WHEELING CONNECTING RAILWAY, PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILROAD

The Benwood & Wheeling Connecting, hereinafter called the Benwood, operates 3 miles of main track and 4.33 miles of yards and sidings within the switching district of the city of Benwood, W. Va., and interchanges traffic at that point with the B. & O., Pennsylvania, and Wheeling Terminal. The service rendered is terminal switching and a portion of its switching charges are absorbed by trunk-line carriers. Details concerning operations are contained in *Benwood & Wheeling Co.* v. *P., C., C. & St. L. R. R. Co.*, 62 I. C. C. 357, decided June 23, 1921. Eleven locomotives and 25 freight cars are owned. These cars are adapted for interchange, but are used exclusively in local service. Under normal conditions daily interchange traffic amounts to approximately 38 cars inbound and 18 outbound.

For the use of foreign freight cars the Benwood makes settlements with connecting carriers on a modified demurrage basis with three days' free time, as prescribed in *Benwood & Wheeling Co.* v. *P., C., C. & St. L. R. R. Co.*, *supra*. Prior thereto the Benwood paid per diem and received a per diem reclaim of four days per car. In the calendar year 1925, a total of 18,656 loaded cars were interchanged, which cars were on line 44,049 car days, an average of 2.36 days per car. The detention by monthly periods is not given. No car hire accrued in that year. Demurrage collections aggregated $17. The average detention in March, June, September, and

December, 1925, as compared with detention during the same months in 1913 immediately prior to the date on which the present system was made effective, is set forth in the subjoined table:

	1925			1913		
	Loads	Days	Average	Loads	Days	Average
March	1,118	2,483	2.2	2,314	8,575	3.7
June	1,828	3,701	2.0	3,553	13,387	3.8
September	2,498	4,369	1.7	2,200	9,997	4.5
December	187	261	1.4	1,269	5,756	4.5
Total	5,631	10,813	1.9	9,336	37,715	4.0

These records denote a reduction in average car detention of more than 50 per cent in 1925 under the present basis, as compared with detention in 1913 on the per diem reclaim plan. Net railway operating deficit was $48,476 in 1925 and $21,168 in 1926.

The Benwood makes no complaint. It is satisfied to continue to make car-hire settlements on the basis now in force, or is willing to pay per diem if allowed a reclaim sufficient in amount to absorb its car-hire expense while cars are in terminal-switching service, but contends that the existing per diem rules place a penalty on car efficiency, for the reason that the harder the switching carrier works to return cars promptly the more it is penalized through a reduction in its reclaim. A witness testified that 24 hours is needed to move cars between interchange points with connecting carriers and points of placement with shippers or consignees, and that if the per diem basis is reestablished a reclaim of at least three days should be authorized.

NO. 10174 (SUB-NO. 1), M'KEESPORT CONNECTING RAILROAD (NATIONAL TUBE COMPANY *v.* PENNSYLVANIA RAILROAD COMPANY ET AL.)

The McKeesport Connecting, hereinafter called the McKeesport, operates 6.05 miles of main track and 8.09 miles of yards and sidings within the switching district of McKeesport, Pa., and interchanges traffic at that point with the B. & O., Pennsylvania, and P. & L. E. Sixteen locomotives and 826 cars are owned, but such cars are not interchanged. The McKeesport serves the National Tube Company, the American Sheet & Tin Plate Company, the McKeesport Sand & Supply Company, and in addition three public team tracks. In *National Tube Co.* v. *P., C., C. & St. L. R. R. Co.*, 61 I. C. C. 590, decided April 5, 1921, we found that the McKeesport, the National Tube Company, and the American Sheet & Tin Plate Company, are owned by or in the interest of the United States Steel Corporation.

Sewell Valley by purchase of its capital stock and by lease. *Control of Sewell Valley R. R.*, 138 I. C. C. 85, decided January 9, 1928, and case there cited. These complaints will be dismissed.

NO. 16597, WABASH, CHESTER & WESTERN RAILROAD v. ILLINOIS CENTRAL RAILROAD ET AL.

By complaint filed on December 31, 1924, complainant alleges that the charges assessed by the Missouri Pacific and six other connecting railroads, under the per diem rules for use and detention of foreign freight cars while on its line were and are unjust and unreasonable. Defendants filed a cross-complaint. A hearing was held, and a proposed report issued September 15, 1925. Subsequently the case was consolidated with this proceeding. The name of this complainant has since been changed to Chester & Mount Vernon Railroad, and the property is now controlled by defendant Missouri Pacific through stock ownership and operated by that carrier under lease. *Acquisition by Chester & Mt. Vernon R. R.*, 138 I. C. C. 313, decided March 19, 1928. This complaint will be dismissed.

NO. 16972, BIG SANDY & KENTUCKY RIVER RAILWAY COMPANY v. CHESAPEAKE & OHIO RAILWAY COMPANY

The Big Sandy & Kentucky River, a common carrier hereinafter termed the Big Sandy, extends from a stub end at Carver, Ky., through a mountainous country to Dawkins, Ky., where it connects with the C. & O., its only outlet. On April 11, 1925, it filed a complaint against the C. & O., alleging that the charges assessed under per diem rules are unjust and unreasonable. We are asked to fix reasonable rules for the future and award reparation. Complainant operates about 25 miles of main line and 1.73 miles of yards and sidings. The property is owned by the Dawkins Lumber Company, an industry served, which furnishes about 22 per cent of the freight traffic. Three other lumber shippers and seven coal mines are served, in addition to an estimated population of 35,000 to 40,000 people. No freight equipment is owned. Locomotives in use are rented from the C. & O. Freight traffic is about two-thirds coal and one-third lumber, and approximates 6,000 to 9,000 cars per year. Passenger revenues vary from $20,000 to $25,000 annually. Investment in road and equipment as of July 1, 1927, amounted to $996,000.

When the Big Sandy was constructed, officials of the C. & O. agreed verbally that no car rental would be assessed and none was paid from 1918 to January 1, 1919. Beginning on that date demurrage was assessed, the C. & O. contending that this arrangement was in conformity with A. R. A. rules. Effective May, 1921, the Big

Sandy was placed on a per diem basis without free time or reclaim, and per diem was paid until April 1, 1924. From and after that date it declined to settle on those terms, and the C. & O. has since deducted per diem from freight revenues in connection with junction settlements. Several conferences were held with C. & O. officials, but the latter declared no relief could be afforded because of A. R. A. rules.

In the month of January, 1927, a total of 556 loads were interchanged, 20 inbound and 536 outbound, of which 90.4 per cent were transported in cars owned by the C. & O. In that month per diem aggregated $1,364 and averaged $2.45 per load interchanged. On a per diem basis with two days' free time the cost would have been $408, and on a straight demurrage basis $891. For the 7-year period, 1921 to 1927, inclusive, car detention on the Big Sandy averaged 3 days per car. In 1926 freight cars on line per day averaged approximately 45.

In January, 1927, a total of 556 loads were interchanged, of which 451 were coal, the remainder lumber and miscellaneous freight. The revenue received by the Big Sandy averaged $27.95 per load, that accruing to foreign lines $115.60.

The Big Sandy contends that its service is similar to that of a terminal railroad, and that it performs switching, spotting, and inspection service, weighs the shipments, and allows shippers and consignees two days' free time in accordance with demurrage rules. The Big Sandy seeks the establishment of some method of settlement that will reduce its car-hire expense, and suggests a modified demurrage basis with three days' free time per car.

NO. 16546, SKANEATELES RAILROAD *v.* NEW YORK CENTRAL RAILROAD COMPANY

By complaint filed December 5, 1924, the Skaneateles alleges that the charges assessed by the New York Central under the per diem code for the use and detention of freight cars since March 1, 1920, are unjust and unreasonable and in violation of section 208 of the transportation act, 1920. We are asked to prescribe reasonable regulations, retroactive to March 1, 1920. The case was consolidated with and evidence received in this proceeding. The Skaneateles began operations in 1867. It is a Class III common carrier, not industrially owned or controlled, and extends from Skaneateles Junction, N. Y., where it connects with the New York Central Railroad, its only outlet, a distance of 5 miles upgrade to Skaneateles village. Spurs, switches, and sidings total 25 in number and aggregate 2.66 miles in length. Three locomotives and four work cars are owned. For interchange freight service it is dependent upon cars owned by other carriers. Investment in road and equipment approximates

$211,000, with capitalization of $100,000. The Skaneateles is not a party to joint tariffs. Local freight charges are added to junction rates. In addition to Skaneateles village, population 1,700, it serves 10 manufacturing establishments which are stationed at various points along the line. These concerns manufacture woolens, paper, felt, roofing material, furniture, box board, fiber boxes, and sauerkraut. Most raw materials are shipped inbound and the manufactured products handled outbound. There is also a storehouse for farm products. More than 80 per cent of total operating revenues are derived from freight traffic, and of the latter about 98.5 per cent is joint-haul business. In the calendar years 1925 and 1926 an aggregate of 15,210 loads were interchanged, of which 9,855 or 64.9 per cent were inbound and 5,355 outbound. Gross freight revenue in those two years amounted to $159,514, per diem expense 19.1 per cent thereof. Operating revenues on all traffic totaled $190,755.46, operating expenses $155,518.63, operating ratio 81.5 per cent, net operating revenue $35,236.83, per diem expense $30,505, railway taxes $7,828.90, leaving a deficit of $2,597.07 before payment of interest on debt of $2,031.65. On 225 shipments interchanged in January and February, 1927, the revenue of the Skaneateles averaged $10.07 per load, that accruing to other carriers $87.90 per load.

This carrier is not a subscriber to the per diem agreement, but has a contract with the New York Central, which either party may terminate upon 60 days' notice, under which it pays straight per diem without reclaim, settling direct each month with the New York Central for all per diem accruals. Prior to Federal control it paid straight per diem with no free-time allowance. From April 1, 1918, to August 31, 1920, which embraces the guaranty period and a portion of the period of Federal control, it was allowed two days' free time on each freight car interchanged, after which per diem at the prevailing rate was paid. The per diem rate was then 60 cents per car day. The Skaneateles contends that the increase to 90 cents September 1, 1920, and subsequently to $1 was in violation of section 208 of the transportation act, 1920. The contrary was found in *Marcellus & Otisco* v. *N. Y. C. R. R. Co.*, 104 I. C. C. 389, 391, and no further mention will be made of this feature.

An early morning train leaves Skaneateles village at 6.50 a. m., runs to the Junction and returns in 1 hour and 15 minutes. A similar round trip is made in the late afternoon. A locomotive which performs a gathering and switching service begins operations at Skaneateles village around 8.30 a. m. daily, shifts cars in and out at the several industries, hauls outbound cars to the Junction, and returns with inbound cars during the forenoon. In the afternoon the operation of gathering and distribution is repeated. The

longest haul is 5 miles. Practically all employees serve in more than one capacity.

The Skaneateles contends that it serves an industrial center, performs an assembling service on outbound traffic, and acts as a short terminal carrier for inbound shipments, that this service is substantially similar to that performed by terminal switching roads, and hence it is entitled to the same consideration respecting free time on freight cars as switching carriers. Per diem rule 5 authorizes terminal-switching roads which do not participate in through rates to reclaim an average of not to exceed five days per diem on each loaded car interchanged. If a switching district were established at the interchange point of the New York Central and Skaneateles, and the industries served by the latter included therein, the Skaneateles would be entitled to a switching reclaim under existing rules by subscribing to the per diem agreement. Switching districts are arbitrarily established by trunk lines.

Substantial relief from the present burden of per diem payments is sought by the Skaneateles, and it suggests establishment of the so-called Birmingham Southern basis with three days' free time on each load interchanged, or a modified per diem basis with three days' reclaim. It is estimated that car hire in 1926 would have cost $141 under the Birmingham Southern basis and $1,446 on a modified per diem basis with three days' reclaim. Detention of foreign cars in 1925 and 1926 combined averaged two days per load. The New York Central intimated that its accounting expense was augmented because the Skaneateles does not subscribe to the per diem agreement, but the evidence indicates that the additional accounting expense, if any, is negligible.

PER DIEM WITH RECLAIMS VERSUS MODIFIED DEMURRAGE BASIS OF CAR-HIRE SETTLEMENT

As indicated elsewhere in this report, we have frequently condemned the per diem and reclaim arrangement as a basis for car-hire settlement with industrial common carriers. Under that arrangement the industrial carrier collects from shippers and retains the progressive or average demurrage rate, pays per diem to car owners and in turn collects per diem reclaims from connecting carriers which might, and in the past frequently did, exceed the per diem paid. As a result the industrial road made a profit on the reclaim which eventually benefited the controlling industry. The payment of excessive reclaims might well constitute a rebate to the affiliated industry. However, if the reclaim is predicated upon the actual time necessary for the industrial road to handle cars in terminal-switching service, under efficient operation, the chances of its being used as a rebate practically or entirely disappears.

On the other hand, the placing of an industrial railroad on a modified demurrage basis may, under certain circumstances, enable such carrier to profit in connection with car-hire settlements to an even greater extent than under the reclaim plan. This is chiefly due to the fact that in some of our decisions a modified demurrage basis has been applied to cars handled in line-haul service and interterminal switching, as well as on cars employed in terminal-switching service. The A. R. A. rules do not authorize reclaims on cars handled in line-haul or interterminal service, but do provide for reclaims in connection with terminal switching. Such industrial railroad may also profit, regardless of the character of service, if the free time allowed per car is substantially in excess of that required.

Terminal switching is a terminal movement, within a switching district for a switching charge, of a loaded car which another carrier handles in line-haul service. The switching charge may be on a car or ton basis and may or may not be absorbed. The record indicates, for example, that if a given industrial railroad during a calendar year actually requires an average of about three days per load interchanged to handle cars in terminal-switching service, approximately the same result will be attained so far as expense to the industrial railroad is concerned by placing it on a modified demurrage basis with three days' free time with the privilege of averaging car detention, as by requiring it to pay per diem and allowing a reclaim of three days. If the industrial line subscribes to the per diem agreement and operates on a reclaim basis, it will remit to car owners the per diem accruals, which may be $1 on some cars and several dollars on others, and will reclaim from connecting carriers $3 for each and every loaded car interchanged. Reclaim settlements are effected monthly. In some months, cars will be released by shippers and consignees with comparative promptness, and in such months it may collect through its reclaim more money than it pays out. In other months it will expend more than its reclaim amounts to. The opportunity for profit from the reclaim arises when an arbitrary amount is allowed, which was formerly the custom, or when the amount fixed is based upon a check that is not representative of average conditions over a calendar year. The demurrage collected by such industrial line from shippers and consignees under published tariffs will be retained.

If, instead of the reclaim plan discussed above, the industrial carrier which performs terminal switching makes car-hire settlements on a modified demurrage basis with three days' free time, such as we have prescribed in several instances, it will collect and retain all or practically all demurrage which accrues against shippers and consignees. The three days' free time will apply to each load interchanged. If a car is returned to a connecting carrier

in two days, such car will earn a credit, and if a car is retained four working days a debit will accrue. These debits will cost $2 each if not canceled by credits. If a car is retained seven working days, four debits will accrue, but such debits up to a maximum of four per loaded car, may be canceled by credits earned by other cars. After a car loaded in one direction is held seven working days, a detention charge of $5 per car day is applicable which can not be offset by credits. The $5 rate also applies against shippers which hold cars loaded inbound or outbound more than seven working days. The industrial railroad which operates under a modified demurrage basis, may collect demurrage charges from its shippers and consignees and yet pay little or nothing to connecting carriers for car detention. This is due in part to the fact that the debits which accrue on cars handled for one industry may be, and frequently are, canceled by credits earned on cars handled for another industry, and may be due in part to prompt handling. The record discloses that industrial switching railroads which make settlements on a modified demurrage basis actually pay little car hire. In the year 1925 the Illinois Northern, an industrial switching road at Chicago, collected $5,944 in demurrage, and paid connecting carriers $1,764. A total of 77,218 loaded cars were interchanged. The Benwood & Wheeling Connecting, collected $17 demurrage in 1925 and paid nothing to connecting carriers. The Lake Erie & Fort Wayne collected $435 demurrage from its patrons in 1925 and paid connecting carriers $127, of which $125 represented detention charges at $5 per car day.

The A. R. A. contends that a check should be made and an adjustment effected each year in the amounts which industrial railroads are allowed to reclaim, but such frequent changes are not shown by the record to be necessary. A contention that the switching rates of such roads should be adjusted each year to conform with the rise and fall in their operating expenses would have just as much merit. The reclaims allowed by trunk lines to each other in connection with cars handled in terminal-switching service are seldom revised. Such changes involve detailed examination of the records and are quite expensive. At Chicago the last check was made in 1922.

As noted in the foregoing, we have prescribed a modified demurrage basis in certain instances to apply to cars handled in line-haul service. The Valley & Siletz and the Birmingham Southern are examples. The latter also performs terminal switching. We have also prescribed this basis of settlement for cars handled in interterminal switching by the Illinois Northern, Chicago Short Line, Pullman, and Manufacturers' Junction. Under the per diem code, reclaims are prohibited on cars handled in line-haul or interterminal-switching service. Hence, in cases where the modified demurrage

rules have been applied to cars in line-haul and interterminal service, they are more liberal to the industrial railroad than the per diem code.

If excessive free time be allowed, the industrial carrier might divert freight cars to local or plant service and have the use of such equipment for considerable periods of time in the aggregate without paying therefor, and thus avoid the purchase and maintenance of cars for such service. The amounts saved would eventually benefit the controlling industry. In some cases the free time fixed by our decisions has substantially exceeded in amount the average detention of freight cars on the industrial railroads. The Manufacturers' Junction is allowed four days' free time per load interchanged in 78 I. C. C. 475. In the year 1924 foreign cars were on line an average of only 3.22 days per load handled. It is possible for the industrial railroad which operates under either the reclaim plan or a modified demurrage arrangement with the average agreement, to derive a profit in connection with car-hire settlements if the reclaim or free-time allowance is excessive.

Car accounting by trunk lines at Chicago, incident to car-hire settlements with the Pullman, Illinois Northern, Chicago Short Line, and Manufacturers' Junction is more complicated and expensive since establishment of the modified demurrage basis of settlement. Carriers which interchange cars with those four industrial railroads estimated that the accounting expense incurred, in addition to that which would have been necessary had such industrial lines been subscribers to the per diem agreement, amounted in the calendar year 1924 to $19,180.

The accounting difficulties at Chicago arise principally from the fact that cars received by the industrial railroads from one carrier are, in the usual course of business, frequently delivered to another carrier. These difficulties can best be understood by comparing the accounting operations necessary under both methods of settlement. If the Illinois Northern, for example, were a subscriber to the per diem agreement it would be required to report per diem direct to car owners. Should the Burlington under such circumstances deliver a Union Pacific car to the Illinois Northern, the Burlington would mail a junction card to the Union Pacific, giving notice of the interchange, and the car owner would look to the Illinois Northern for the car rental until it received a notice from that carrier that the car had passed to another road. Should the owner be short per diem for one or more days when settlement was made a month or two later, inquiry would probably be made of the Burlington and Illinois Northern and each could determine by a check of its own records whether or not it had failed to report the requisite amount.

The accounting at Chicago under the modified demurrage rules is more complex. If the Burlington now delivers a Union Pacific car to the Illinois Northern, the Burlington pays per diem to the car owner throughout the period the car is on the rails of the Illinois Northern. Should the latter deliver the car to the Pennsylvania, a diversion report would be transmitted to the Burlington, giving the date of delivery, and the Burlington would then transmit a junction card to the Union Pacific giving notice of the interchange to the Pennsylvania. Errors sometimes occur in diversion reports as to date of interchange, and special emphasis is laid on the difficulty and expense of straightening out such errors. A shortage in per diem payments on a given car may not be discovered by the car owner for a month or two or more after the interchange took place. A witness for the Burlington testified that it is sometimes necessary to send a representative across town to check the records of another carrier to determine what road is responsible for per diem where a discrepancy of this character occurs. There is no contention that reports of the industrial railroads contain a relatively greater number of errors than reports of other carriers. It is the difficulty of correcting the error which occasions expense, since the trunk lines can not obtain the requisite information from their own records. If per diem is not paid within four months from the end of the month in which it accrued, a penalty of 15 cents per car day is provided by per diem rule 1. There was some testimony to the effect that when discrepancies in per diem settlements, occasioned by errors in diversion reports, are not adjusted for several months the trunk line may be subjected to this penalty charge. There was no showing, however, that the aggregate of such items is substantial in amount.

Chicago trunk lines also object to the accounting they must perform in applying the modified demurrage rules against the Chicago industrial railroads exclusive of that which is necessary when errors occur. If the Illinois Northern, for instance, were a subscriber to the per diem agreement, the Burlington might make delivery of a foreign car and the records of the Burlington would be closed for the time with respect to that particular car. At present the Burlington must keep the record open and later enter the date the car is returned or delivered by the Illinois Northern to another carrier, the number of days it was held by the Illinois Northern, whether the car earned a credit or should be charged with one or more debits, and at the end of the accounting period the various credits and debits must be aggregated to determine the amount of detention charges, if any, which the Illinois Northern should pay. The accounting here complained of amounts to something, but is less complicated than the

demurrage accounts which must be maintained by trunk lines in connection with shippers served by more than one carrier, of which there are many, since in the case of the shipper, debits and credits on inbound loads are recorded separately from those on outbound loads, and when a car is loaded both inbound and outbound there is the necessity of ascertaining and recording the date the car is released after removal of the inbound loading and the date placed for the outgoing shipment.

Upon this record we find that:

1. Common carrier railroads, whether subscribers to the per diem agreement of the American Railway Association or nonsubscribers, are entitled to receive reasonable compensation in the form of a daily rental for the use of their general-service freight cars when on foreign lines, and that the present per diem charge of $1 per car day reasonably compensates car owners for average car ownership and maintenance costs. The reasonableness of this per diem rate is not questioned.

2. The per diem rules are unreasonable to the extent that they do not authorize payment of the same daily rental of $1 per car day to common carrier nonsubscribers as to subscribers for the use of general-service freight cars.

3. Per diem rule 5 is unreasonable to extent that it prohibits car-hire allowances to nonsubscribers which perform terminal switching, as the latter term is defined by the bowling reclaim rules of the American Railway Association, and should be so amended as to provide for similar reclaim allowances to nonsubscribers as to subscribers thereto.

4. Paragraph (b) of per diem rule 6, which pertains to car-hire [illegible] nonsubscribers, is unreasonable and should be so [illegible] to make settlements with nonsubscribers as [illegible] with our findings herein.

5. It is unreasonable and unreasonable to require short-line car lines which [illegible] to the road from which received [illegible] from car owners through [illegible] to their connecting [illegible] for [illegible] all [illegible] [illegible] [illegible]

7. For the future it will be reasonable for common-carrier railroads outside switching districts, other than those referred to in finding 6 to pay per diem to connecting carriers on railroad-owned cars after deducting an average of two days' free time per loaded freight car interchanged, settlements to be made at the end of each calendar month, except that no car hire should be paid for cars received for return coal loading from coal mines.

8. The modified demurrage bases of settlement now in force with the Chicago Short Line, Illinois Northern, Manufacturers' Junction, Pullman, Bay Terminal, Benwood & Wheeling Connecting, Birmingham Southern, Genesee & Wyoming, Lake Erie & Fort Wayne, Lakeside & Marblehead, Lime Rock, McKeesport Connecting, Monongahela Valley, Northampton & Bath, Tionesta Valley, Valley Railroad, and Valley & Siletz are unreasonable and should be abrogated, and that for the future it will be reasonable for connecting carriers to make car-hire settlements with these railroads in conformity with the general findings herein; provided, however, that the modified demurrage bases of settlement now in operation on such of these lines as perform switching service should be continued in force for a reasonable time, but not to exceed six months from the date hereof, to enable interested carriers to determine the amount of time actually required by each of such railroads to handle freight cars in terminal-switching service.

9. The existing basis of car-hire settlement with the Big Sandy & Kentucky River, Greenville & Northern, Jefferson & Northwestern, Kosciusko & Southeastern, Morehead & North Fork, Skaneateles, South Manchester, and Virginia Blue Ridge, is unreasonable, and that for the future it will be reasonable for connecting carriers to make car-hire settlements with these railroads in conformity with the general findings herein. Inasmuch as the bases of settlement here proposed are for general application by all common carriers by railroad throughout the country, no retroactive adjustments will be required.

No order will be entered at this time, but carriers will be expected to modify their rules and practices to conform with our conclusions herein. If this is not done within a reasonable period, the matter may be brought to our attention for appropriate action.

A report of reclaims allowed to short-line railroads pursuant to findings herein and any changes subsequently made therein should be filed with us as soon as determined upon.

and controls the Saluda Crushed Stone Company. The lumber company and stone company provide more than 80 per cent of the freight tonnage.

This line of railroad was built about 20 years ago. It met with financial difficulties and ceased operation but was later reorganized and operated until the early part of 1919 when it again ceased operating because of financial difficulties. It was purchased by present owners at a receiver's sale in the fall of 1919. During the period March, 1920, to January, 1921, the line was rehabilitated and again put in condition for operation, though only intrastate business was handled. In January, 1921, it commenced operations as a common carrier of interstate and intrastate traffic. Joint rates, both class and commodity, are in force. Gross operating revenues were $9,814 in 1921, $30,859 in 1922, and $40,363 in 1923. Operating expenses for the same years amounted to $47,543, $68,989, and $81,837. For that 3-year period a deficit of $118,333 was incurred. In 1922 and 1923 a total of 110,806 tons of freight was handled, mostly outbound. In those two years 465 cars were received from the Southern which were on line an average of 3.18 days per car.

Freight equipment consists of 2 locomotives, 16 flat cars, 1 box car, and 19 gondolas. These cars are interchanged with connections. When on the line of the Southern, whether used in line-haul or switching service, no compensation of any kind is received. Per diem is paid by the Piedmont & Northern.

From March, 1920, when the line began operations, to December 31, 1923, settlements for the use of foreign freight cars received from the Southern were effected on the straight demurrage basis. Beginning January 1, 1924, the Southern established a straight per diem basis without free time or reclaim, which is now in force.

NO. 16420, SOUTH MANCHESTER RAILROAD COMPANY *v.* NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY

The South Manchester filed a complaint on October 29, 1924, alleging that the charges assessed by defendant, New Haven, under the per diem rules for the use and detention of freight cars when on the lines of complainant were and are unreasonable. We are asked to prescribe just and reasonable rules and charges for the future, and to require an adjustment of charges made from and after July 1, 1924. A proposed report was issued by the examiner May 22, 1925, in which it was recommended that the complaint be dismissed. Subsequently the case was consolidated with this proceeding. No additional evidence was introduced.

This carrier owns and operates 1.94 miles of main-line track extending from Manchester, Conn., where it connects with the New Haven, to South Manchester, Conn., and 1.21 miles of sidetracks. Capital stock is owned by Cheney Brothers, silk manufacturers, an industry served, which provides some 50 per cent of the freight tonnage. The principal commodities handled are coal, lumber, paper, raw and manufactured silk, and cement. Coal is handled under a combination of the rate to Manchester, plus proportional commodity rate of the South Manchester beyond. On other shipments, the South Manchester is allowed an arbitrary which is deducted from the through rate before the rate is divided between other carriers. Most traffic is inbound. During 1922 and 1923 the South Manchester received 3,103 loaded cars from the New Haven, and originated 583 loads. The cars containing these shipments were on line an average of 2.51 days per car unit and 2.12 days per load. Some cars were loaded in both directions. The gross revenue per load averaged $8.08, and more than 25 per cent thereof was expended for car hire.

For several years prior to January 8, 1914, the South Manchester subscribed to the per diem agreement. As a subscriber it made settlements each month directly with many roads in various parts of the country, which involved considerable accounting. From that date to June 30, 1924, straight per diem was paid to the New Haven. Per diem accruals since June 30, 1924, have been withheld and extended negotiations have been conducted with the New Haven with the object of establishing some plan of car-hire settlement other than the per diem basis, but without success.

NO. 15771, GREENBRIER & EASTERN RAILROAD *v.* SEWELL VALLEY RAILROAD ET AL.; NO. 15771 (SUB-NO. 1), SEWELL VALLEY RAILROAD *v.* CHESAPEAKE & OHIO RAILWAY

On March 22, 1924, the Greenbrier & Eastern Railroad filed a complaint against the Sewell Valley, the C. & O., and several other carriers, Docket No. 15771, and on April 23, 1924, the Sewell Valley filed a complaint against the C. & O., Docket No. 15771 (Sub-No. 1). Both complaints assailed the reasonableness of the charges collected for the use of freight cars. Hearings were held, and one proposed report covering both complaints was issued on May 28, 1925. Subsequently such cases were consolidated with this proceeding. The principal defendant, the C. & O., has since acquired control of the Greenbrier & Eastern by purchase of its capital stock and by purchase of its railroad properties; and has acquired control of the

APPENDIX

RULES GOVERNING SWITCHING SERVICE (In Effect July 1, 1927)

Definitions

Roads performing switching service or roads for which such service is performed, are defined as follows:

(a) Terminal switching roads,

(b) Intermediate switching roads,

(c) Carrier roads.

Terminal Switching Roads

A terminal switching road is a road on whose rails, or on private tracks connecting therewith:

(a) A car received from a carrier road, either direct or through an intermediate road, is unloaded, reconsigned or reshipped.

(b) A car is loaded, reconsigned or reshipped and delivered to a carrier road, either direct or through an intermediate road.

The service performed being within the designated switching limits and at a switching charge.

Intermediate Switching Roads

An intermediate switching road is a road handling a car from one railroad to another railroad within the designated switching limits, the road performing the service not participating in the freight rate.

Carrier Roads

A carrier road is:

(a) A road which, participating in the freight rate on the inbound shipment, delivers a car to a terminal switching road, either direct or through an intermediate switching road, for unloading, reconsigning or reshipping.

(b) A road which, participating in the freight rate on the outbound shipment, receives a car from a terminal switching road, either direct or through an intermediate switching road, that has been loaded, reconsigned or reshipped by the terminal switching road.

Switching Service

Switching service is defined as follows:

(a) Terminal Switching Service. The service performed by a terminal switching road, as defined in these rules.

(b) Intermediate Switching Service. The service performed by an intermediate switching road, as defined in these rules.

(c) Inter-terminal Switching Service. The service performed in handling a car which has been loaded or reshipped within the switching limits on one road for unloading or reshipping within the same switching limits on another road and at a switching charge.

SWITCHING RECLAIM RULES (SUBJECT TO SUCH CHANGES AS MAY BE REQUIRED TO MEET LOCAL CONDITIONS)

Rule 1

The carrier road will allow the switching road a reclaim in accordance with Per Diem Rule 5 at the current per diem rate.

Rule 2

Section 1.* No reclaim shall be allowed for an intra-terminal switching movement except as provided in per diem rule 5, paragraph (c).

Section 2. No reclaim shall be allowed to a non-subscriber.

Rule 3

Rule 1 of this Code will not apply to cars which are delivered empty to switching road for loading, and are returned empty to carrier road by reason of shippers' cancellation of order, or error on the part of carrier road, and to cars which are rejected by shippers account of being unsuitable for specified loading when received from the carrier road. (See Per Diem Rule 14.)

Rule 4

The right of reclaim is not affected by the fact that in switching service the switching road may collect its charges from the shipper or consignee.

Rule 5

These rules apply only to cars subject to per diem basis of settlement, including cars owned by the switching road, except they shall not apply to cars loaded with company material (including company coal) for the use of the switching road.

Rule 6

Section 1. When the average number of days is used as the basis for settlement of terminal switching reclaims, the arbitrary to be allowed shall be based on the average time required by the switching road to switch cars for all the roads considered as a whole in the switching district involved. Such arbitrary shall be obtained from the records of the switching road as follows:

(a) A check covering a representative number of seasonal months shall be made under the direction of the American Railway Association, or otherwise as may be agreed upon between the roads interested.

(b) The check shall cover all cars included in terminal switching reclaim statements for the months to be checked, except—

(1) Cars loaded with livestock, but not excepting cars loaded with emigrant movables or exhibition live stock.

(2) Trap or Ferry Cars.

(3) Cars used in local and inter or intra plant service.

(4) Cars on which the required records are incomplete.

Section 2. In figuring detention, the days shall be computed as follows:

(a) Cars received loaded and returned empty to the road from which received or delivered empty to another road within the same switching district, and cars received empty and returned loaded to the road from which received or delivered loaded to another road within the same switching district, count from date received to date of delivery.

(b) Cars received loaded and returned loaded to the road from which received or delivered loaded to another road within the same switching district, count from date received to date of delivery.

(c) Cars picked up from road haul service and placed in terminal switching service, count from date placed for loading, as evidenced by the demurrage

* Effective January 1, 1928.

records (using 7 A. M. Demurrage placement date) to date delivered to outbound carrier as evidenced by interchange reports.

(d) Cars diverted from terminal switching service to road haul service, count from date of receipt as evidenced by the interchange reports, to the date released from inbound load as evidenced by the demurrage records.

(e) On cars handled in terminal switching service and subsequently reconsigned or reshipped in road haul service, count from date of receipt as evidenced by interchange reports to date released as evidenced by demurrage records.

(f) On cars received in road haul service and subsequently reconsigned or reshipped in terminal switching service, count from date of release as evidenced by demurrage records, to date delivered to outbound carrier, as evidenced by interchange reports.

(g) Cars owned by the switching road which are loaded in terminal switching service shall be considered pick-up cars and detention computed per paragraph (e).

(h) Cars owned by the switching road which are unloaded in terminal switching service shall be considered diverted cars and detention computed per paragraph (d).

(i) Where an intermediate switching road is involved in the terminal switching movement, the receipt from or delivery to the intermediate road shall be considered as receipt from or delivery to the carrier road.

Section 3. In computing detention in accordance with this rule, the detention of any car beyond eight (8) days shall be eliminated except if a car received loaded is made empty, reloaded and returned to the road from which received or delivered to another road, the detention beyond sixteen (16) days shall be eliminated.

Section 4. The terminal switching reclaim allowance shall be determined by dividing the total detention, computed in accordance with this rule, by the total number of cars included in the check, cars received loaded, which are made empty, reloaded and returned to the road from which received, or delivered to another road, to be counted as two (2) cars. The quotient to be expressed in two decimals, the second decimal to be increased by one (1) when the third (3rd) decimal is five (5) or more.

Rule 7.

An Arbitration Committee may be appointed by interested roads in any local territory. All questions arising under these rules shall be submitted to such committee through its secretary, who shall briefly set forth the points at issue and each party's interpretation of the rule on which the claim is based. Should one of the parties to the dispute refuse to furnish information, such Arbitration Committee shall use its judgment as to whether or not it can properly decide the question at issue, and shall base its decision upon these rules or as modified under agreement between the roads interested and the abstract submitted, and its decision shall govern, except that either party to the dispute may appeal to the Per Diem Rules Arbitration Committee of the American Railway Association.

By the commission.

[SEAL.] GEORGE B. MCGINTY,
Secretary.

U. S. GOVERNMENT PRINTING OFFICE, 1932.

INTERSTATE COMMERCE COMMISSION

No. 17801

RULES FOR CAR HIRE SETTLEMENT

Decided July 15, 1930

Order entered to give effect to all of our findings in previous report, 160 I. C. C. 369.

Appearances same as in original report.

SUPPLEMENTAL REPORT OF THE COMMISSION

McMANAMY, *Chairman:*

In our report rendered herein on January 7, 1930, 160 I. C. C. 369, we made specific findings and stated in connection therewith that "no order will be entered at this time, but carriers will be expected to modify their rules and practices to conform with our conclusions herein. If this is not done within a reasonable period the matter may be brought to our attention for appropriate action."

The general committee, transportation division, of the American Railway Association has directed our attention to circular dated June 21, 1930, which that association has issued to its members which contains the following paragraphs:

> The report of the Commission in Docket 17801, issued January 7, 1930, was in the form of FINDINGS, which does not have the same status as an ORDER. Railroads are not legally required to comply with FINDINGS in this case.
>
> It is, therefore, the recommendation of the General Committee, Transportation Division, that members of the American Railway Association, subscribers to the car service and per diem agreement, refrain from putting into effect the findings of the Interstate Commerce Commission in this case, except that nonsubscriber railroads now setting on the so-called Birmingham Southern or modified demurrage basis may properly be placed on a per diem basis.

Our reasons for entering no order in this proceeding at the time the report was served were, as indicated in the report, to permit the carriers in an appropriate way to modify their rules and practices to conform with our findings provided such modifications were made within a reasonable period. Such modifications have not been made, and the general committee, transportation division, American Railway Association, now recommends to subscriber members that they refrain from putting into effect our findings, except that nonsubscribers now settling on the so-called Birmingham Southern basis may properly be placed on a per diem basis. To follow the recom-

mendation and suggestions of the general committee, subscriber lines would accept the said findings as abrogating certain of our findings and orders issued in former proceedings, which were reopened and consolidated with this proceeding, while at the same time rejecting the substitute measures found reasonable by us, because such substitute measures are but findings. In other words, they are apparently willing to accept such of our findings as may prove satisfactory to them as abrogating our former findings, some of which are made effective by outstanding orders, but are not willing to accept our findings, which substitute a different basis of car-hire settlement for those to be abrogated, for future application. An appropriate order will be entered to give effect to all of our findings.

Since our findings and order herein will apply to the several cases reopened and consolidated herewith no orders in the individual cases are necessary, except to vacate our outstanding orders in those cases in so far as such orders may be in conflict with our order herein.

165 I. C. C.

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 15th day of July, A. D. 1930

No. 17801

Rules for car-hire settlement

It appearing, That by orders dated January 4 and June 7, 1926, the commission entered upon an investigation concerning the lawfulness of the rules for car-hire settlement between common carriers by railroad in the United States for the use and detention of freight cars while on the lines of carriers other than their owners, with a view to making such order or orders in the premises as may be warranted by the record;

It further appearing, That a full investigation of the matters and things involved has been had, and that the commission on January 7, 1930, made and filed a report containing its findings of fact and conclusions thereon, and on July 15, 1930, made and filed a supplemental report, which said report and supplemental report are hereby referred to and made a part hereof;

It is ordered, That respondents herein, as shown in the appendix hereto and made a part hereof, be, and they are hereby, notified and required to cease and desist, on or before October 1, 1930, and thereafter to abstain, from applying rules for car-hire settlements which are in conflict with those prescribed for future application in the next succeeding paragraphs.

It is further ordered, That the said respondents herein be, and they are hereby, notified and required to establish, on or before October 1, 1930, and thereafter to maintain and observe, rules with respect to car-hire settlements which shall provide:

(1) That the same daily car rental shall be paid to common-carrier nonsubscribers as respondents contemporaneously pay to subscribers to the per diem rules agreement of the American Railway Association, for the use of general-service freight cars.

(2) That similar reclaim allowances shall be made to nonsubscribers as to subscribers of the per diem rules agreement, in connection with cars handled in terminal switching service, as the latter term is defined by the switching reclaim rules of the American Railway Association.

(3) That short-line railroads which are less than 100 miles in length, and which return railroad-owned equipment to the road from which received, shall not be required to report per diem accruals to numerous car owners throughout the country, but shall be attached to their connecting carriers for purpose of car-hire settlement.

(4) That common-carrier railroads which interchange freight cars with more than one subscriber railroad, and which deliver to one or more subscribing carriers, freight cars which are received from another such carrier, and railroads 100 miles or more in length, regardless of the number of railroads with which they connect, shall make car-hire settlements direct with car owners in accordance with the per diem rules.

(5) That common-carrier railroads outside switching districts, other than those referred to in paragraph 4 hereof, shall pay per diem to connecting carriers on railroad-owned freight cars after deducting an average of two days free time per loaded freight car interchanged, settlements to be made at the end of each calendar month, except that no car hire need be paid on cars received for return loading with coal from coal mines which are customarily dependent upon connecting carriers for car supply.

It is further ordered, That this order shall continue in effect until the further order of the commission.

And it is further ordered, That all unexpired orders, or parts of unexpired orders, heretofore entered in the proceedings consolidated with and made a part of this proceeding, be, and they are hereby, vacated and set aside in so far as in conflict with our order herein.

APPENDIX

Aberdeen and Rockfish Railroad Company; Abilene & Southern Railway Company; The Ahnapee and Western Railway Company; The Akron & Barberton Belt Railroad Company; The Akron, Canton & Youngstown Railway Company; Alabama and North Western Railroad Company; Alabama Central Railroad Company; Alabama Central Railway, Alabama, Florida & Gulf Railroad Company (R. D. Crawford and W. W. Beall, Receivers); The Alabama Great Southern Railroad Company; Alabama, Tennessee & Northern Railroad Corporation; Alcolu Railroad Company; Aliquippa and Southern Railroad Company; Alton & Eastern Railroad Company; Alton and Southern Railroad; Amador Central Railroad Company; The Androscoggin and Kennebec Railway Company; Angelina & Neches River Railroad Company; The Ann Arbor Railroad Company; The Apache Railway Company; Apalachicola Northern Railroad Company; Appalachian Railway Company; Aransas Harbor Terminal Railway; Arcade and Attica Railroad Corporation; Arcata and Mad River Rail Road Company; Arizona Southern Railroad Company; Arkansas & Louisiana Missouri Railway Company; Arkansas Railroad Company; The Arkansas Valley Interurban Railway Company; The Arkansas Western Railway Company; Aroostook Valley

Railroad Company; *Artemus-Jellico Railroad Company; Asherton and Gulf Railway Company; Asheville and Craggy Mountain Railway Company; Asheville Southern Railway Company; *Ashland Railway Company; Ashley, Drew & Northern Railway Company; The Atchison, Topeka and Santa Fe Railway Company; Atlanta & Saint Andrews Bay Railway Company; Atlanta and West Point Rail Road Company; Atlantic City Railroad Company; Atlantic City & Shore Railroad Company; Atlantic Coast Line Railroad Company; Atlantic Northern Railway Company; Atlantic Port Railway Corporation; Attleborough Branch Rail Road Company; Augusta and Summerville Rail Road Company; Augusta Railroad Company; Augusta Northern Railway;

Baltimore and Eastern Railroad Company; The Baltimore and Ohio Railroad Company; The Baltimore and Ohio Chicago Terminal Railroad Company; Bamberg, Ehrhardt and Walterboro Railway Company; Bamberger Electric Railroad Company; Bangor and Aroostook Railroad Company; Barre and Chelsea Railroad Company; Bartlett Western Railway; Batesville Southwestern Railroad (Estate of R. J. Darnell, Lessee); Bath and Hammondsport Railroad Company; Bauxite & Northern Railway Company; Bay Point and Clayton Railroad Company; The Bay Terminal Railroad Company; The Beaumont, Sour Lake & Western Railway Company; Beaumont Wharf and Terminal Company; Beaver, Meade and Englewood Railroad Company; Beaver Valley Railroad Company; Belfast and Moosehead Lake Railroad Company; Bellefonte Central Railroad Company; Belt Railway Company of Chattanooga; The Belt Railway Company of Chicago; Bennettsville and Cheraw Railroad Company; Benwood and Wheeling Connecting Railway Company; Berkshire Street Railway Company; Berlin Mills Railway; Bessemer and Lake Erie Railroad Company; Bevier & Southern Railroad Company; Big Fork and International Falls Railway Company; Big Sandy and Cumberland Railroad Company; Big Sandy and Kentucky River Railway Company; Bingham and Garfield Railway Company; Birmingham & Southeastern Railroad Company; Birmingham Belt Railroad Company; Birmingham, Selma and Mobile Railroad Company; Birmingham Southern Railroad Company; Black Mountain Railway Company; Blaney & Southern Railway Company; Blue Ridge Railway Company; Blytheville, Leachville & Arkansas Southern Railroad Company; Bonhomie and Hattiesburg Southern Railroad Company; Bonlee and Western Railway Company; Boston and Albany Railroad (The New York Central Railroad Company, Lessee); Boston and Maine Railroad; Bowdon Railway Company; Boyne City, Gaylord and Alpena Railroad Company; Bridgton and Saco River Railroad Company (Robert Braun and Carroll S. Chaplin, Receivers); Brimstone Railroad & Canal Company; Bristol Railroad Company (Henry G. Smith, Temporary Receiver); Brookings & Peach Orchard Railroad Company; Brooksville & Ohio River Railroad Company; The Brownstone and Middletown Railroad Company; The Brownwood, North and South Railway Company; *Buffalo & Erie Railway Company (George MacLeod, Receiver); Buffalo & Susquehanna Railroad Corporation; The Buffalo Creek & Gauley Railroad Company; The Buffalo Creek Railroad Company (Erie Railroad Company and Lehigh Valley Railroad Company, Lessees); Buffalo, Rochester and Pittsburgh Railway Company; Buffalo, Union-Carolina Railroad; Bush Terminal Railroad Company; Butte, Anaconda & Pacific Railway Company;

Cadiz Railroad Company; Cairo and St. Louis Railway Company; Cairo, Truman & Southern Railroad Company; The California and Oregon Coast Rail-

road Company (C. H. Demaray, Receiver); California Central Railroad Company; Camargo and Western Railroad; Camas Prairie Railroad Company; Cambria and Indiana Railroad Company; Camino, Placerville & Lake Tahoe Railroad Company; Campbell's Creek Railroad Company; The Canada and Gulf Terminal Railway Company; Canton Railroad Company; Cape Girardeau Northern Railway Company (George W. Cross, Receiver); Carbon County Railway Company; Carlton and Coast Railroad Company; Caro Northern Railway Company (W. M. Ross, Receiver); Carolina and Northeastern Railroad Company; Carolina and Northwestern Railway Company; Carolina and Tennessee Southern Railway Company; Carolina, Clinchfield and Ohio Railway (Atlantic Coast Line Railroad Company and Louisville and Nashville Railroad Company, Lessees); Carolina, Clinchfield and Ohio Railway of South Carolina (Atlantic Coast Line Railroad Company and Louisville and Nashville Railroad Company, Lessees); Carolina Railroad Company; Carolina Western Railroad; *Carpenter Creek Railroad Co.; Carrollton & Worthville Railroad Company (P. D. Gaines, Receiver); Casville & Exeter Railway Company; The Catonsville Short Line Rail Road Company; Cavalier County Railway Company; Casenovia Southern Railroad Company; Cedar Rapids and Iowa City Railway; Cement, Tolenas & Tidewater Railroad Company; Central Indiana Railway Company; Central of Georgia Railway Company; The Central Railroad Company of New Jersey; Central Railway Company of Arkansas; Central Vermont Railway Company (George A. Gaston and J. W. Redmond, Receivers); Central West Virginia & Southern Railroad Company; The Chaffee Railroad Company; Charles City Western Railway Company; Charleston & Western Carolina Railway Company; Charlotte, Monroe and Columbia Railroad Company; The Chatham, Wallaceburg and Lake Erie Railway Company; Chattahoochee Valley Railway Company; The Chesapeake and Ohio Railway Company; Chesapeake Beach Railway Company; Chesapeake Western Railway; *Chester & Derry Railroad; Chesterfield and Lancaster Railroad Company; Chestnut Ridge Railway Company; Cheswick and Harmar Railroad Company; The Chicago and Alton Railroad Company (William W. Wheelock and William G. Bierd, Receivers); Chicago and Calumet River Railroad Company; Chicago and Eastern Illinois Railway Company; Chicago and Erie Railroad Company; Chicago & Illinois Midland Railway Company; Chicago & Illinois Western Railroad; Chicago and North Western Railway Company; Chicago and Western Indiana Railroad Company; Chicago, Attica & Southern Railroad Company; Chicago, Aurora and Elgin Railroad Company; Chicago, Burlington & Quincy Railroad Company; The Chicago, Detroit and Canada Grand Trunk Junction Railroad Company (Canadian National Railway Company, lessee); Chicago, Duluth and Georgian Bay Transit Company; Chicago Great Western Railroad Company; Chicago, Harvard & Geneva Lake Railway Company; Chicago Heights Terminal Transfer Railroad Company; Chicago, Indianapolis and Louisville Railway Company; Chicago, Kalamazoo and Saginaw Railway Company; Chicago, Milwaukee and Gary Railway Company; Chicago, North Shore and Milwaukee Railroad Company; The Chicago River and Indiana Railroad Company; The Chicago, Rock Island and Gulf Railway Company; The Chicago, Rock Island and Pacific Railway Company; Chicago, Saint Paul, Minneapolis and Omaha Railway Company; Chicago Short Line Railway Company; Chicago, South Bend and Northern Indiana Railway Company; Chicago, South Shore and South Bend Railroad; Chicago, West Pullman & Southern Railroad Company; Christie & Eastern Railway Company; The Cimarron and Northwestern Rail-

way Company; Cincinnati, Burnside & Cumberland River Railway Company; The Cincinnati, New Orleans and Texas Pacific Railway Company; The Cincinnati Northern Railroad Company; Cincinnati, Saginaw and Mackinaw Rail Road Company (Canadian National Railway Company, Lessee); Cisco & Northeastern Railway Company; The Clarendon and Pittsford Railroad Company; The Cleveland, Cincinnati, Chicago and St. Louis Railway Company; The Cleveland, Painesville and Ashtabula Railroad Company; Cliffside Railroad Company; The Clinton and Oklahoma Western Railroad Company; Clinton, Davenport & Muscatine Railway Company; Coeur D'Alene and Pend D'Oreille Railway Company; Collins & Glennville Railroad Company; The Colorado and Southeastern Railroad Company; The Colorado and Southern Railway Company; The Colorado & Wyoming Railway Company; The Colorado-Kansas Railway Company; Columbia, Newberry and Laurens Railroad Company; Columbus and Greenville Railway Company; Combs, Cass and Eastern Railroad Company; Conemaugh & Black Lick Railroad Company; The Cooperstown and Charlotte Valley Rail-road Company; Copper Range Railroad Company; Copper River & Northwestern Railway Company; Cornwall Railroad Company; Coudersport and Port Allegany Railroad Company; Cowlitz, Chehalis & Cascade Railway; Craig Mountain Railway Company; The Crystal River and San Juan Railroad Company; Cumberland and Pennsylvania Railroad Company; Cumberland Railway & Coal Company; The Cuyahoga Valley Railway Company;

Dallas Terminal Railway and Union Depot Company; The Dansville and Mount Morris Railroad Company; Danville and Western Railway Company; Dardanelle & Russellville Railroad Company; Davenport, Rock Island and North Western Railway Company; The Dayton and Troy Electric Railway Company; Dayton and Union Railroad Company; Death Valley Railroad Company; Deep Creek Railroad Company; Deering Southwestern Railway; DeKalb & Western Railroad Company; The Delaware and Hudson Company; Delaware & Northern Railroad Company (Andrew M. Moreland and James J. Welch, Receivers); The Delaware, Lackawanna and Western Railroad Company; Delaware Valley Railway Company; Delray Connecting Railroad Company; Delray Terminal Railroad Company; The Denison and Pacific Suburban Railway Company; Dents Run Railroad Company; The Denver and Intermountain Railroad Company; The Denver and Rio Grande Western Railroad Company; The Denver and Salt Lake Railway Company; DeQueen and Eastern Railroad Company; Des Moines & Central Iowa Railroad; Des Moines Union Railway Company; The Detroit and Huron Railway Company; Detroit and Mackinac Railway Company; The Detroit and Toledo Shore Line Railroad Company; Detroit and Western Railway; Detroit, Caro and Sandusky Railway Company; Detroit, Grand Haven and Milwaukee Railway Company; Detroit, Jackson & Chicago Railway (John F. Collins, Receiver); Detroit, Mt. Clemens & Marine City Railway (Security Trust Company, Receiver); Detroit Terminal Railroad Company; Detroit, Toledo and Ironton Railroad Company; The Dominion Atlantic Railway Company; Doniphan, Kensett & Searcy Railway; Donora Southern Railroad Company; Dover and South Bound Railroad Company; Due West Railway Company; The Duluth and Iron Range Rail Road Company; Duluth & Northeastern Railroad Company; Duluth, Missabe and Northern Railway Company; The Duluth, South Shore and Atlantic Railway Company; Duluth, Winnipeg and Pacific Railway Company; Durham and Southern Railway Company;

East Berlin Railroad Company; The East Broad Top Railroad and Coal Company; East Carolina Railway; East Erie Commercial Railroad; Eastern New York Utilities Corporation; East Jersey Railroad and Terminal Company; East Jordan & Southern Railroad Company; Eastland, Wichita Falls & Gulf Railroad Company; East St. Louis & Suburban Railway Company; East St. Louis, Columbia and Waterloo Railway; East St. Louis Connecting Railway Company; East St. Louis Junction Railroad Company; East St. Louis Railway Company; East Tennessee and Western North Carolina Railroad Company; East Texas and Gulf Railway Company; Edgmoor and Manetta Railway; Elberton & Eastern Railroad Company; El Dorado and Wesson Railway Company; Elgin, Joliet and Eastern Railway Company; Elkins & Alleghany Railroad Company; El Paso Southern Railway Company; Emmaustaburg Railroad Company; *Empire & South-Eastern Railroad; Erie & Michigan Railway & Navigation Co; Erie Railroad Company; Escanaba and Lake Superior Railroad Company; The Esquimalt and Nanaimo Railway Company; The Essex Terminal Railway Company; Etna and Montrose Railroad Company; The Ettrick & Northern Railroad Company (H. R. Madsen, Receiver); The Euclid Railroad Company; Eureka-Nevada Railway Company; Evansville & Ohio Valley Railway Company (William A. Carson, Receiver); Evansville, Indianapolis & Terre Haute Railway Company; Evansville, Suburban & Newburgh Railway Company;

Fairchild & North-Eastern Railway Company; *Fairground R. R. Co.; The Fairport, Painesville and Eastern Railroad Company; The Federal Valley Railroad Company; The Felicity and Bethel Railroad Company; Ferdinand Railroad Company; Fernwood, Columbia & Gulf Railroad Company; The Findlay Belt Railway Company; Flemingsburg and Northern Railroad Company; Flint Belt Railroad Company; Flint River and Northeastern Railroad Company; Florida Central and Gulf Railway; Florida East Coast Railway Company; Fonda, Johnstown and Gloversville Railroad Company; Fordyce and Princeton R. R. Co.; Fore River Railroad Corporation; Fort Dodge, Des Moines & Southern Railroad Company; Fort Myers Southern Railroad Company; Fort Smith and Western Railway Company; Fort Smith, Subiaco & Rock Island Railroad Company; Fort Wayne Union Railway Company; Fort Worth and Denver City Railway Company; Fort Worth & Rio Grande Railway Company; Fort Worth Belt Railway Company; The Fostoria & Fremont Railway Company; Frankfort & Cincinnati Railroad Company; Franklin & Pittsylvania Railway Company; Fredericksburg & Northern Railway Company; The Fredericton & Grand Lake Coal & Railway Company; Fulton Chain Railway Company;

The Gainesville and Northwestern Railroad Company (G. A. Austin and Sydney Smith, Receivers); Gainesville Midland Railway (Gordon C. Carson and W. B. Veasey, Receivers); The Galesburg and Great Eastern Railroad Company; Gales Creek & Wilson River Railroad Company; Galveston, Houston and Henderson Railroad Company; Galveston Wharf Company; The Garden City Western Railway Company; Garyville Northern Railroad Company; Genesee and Wyoming Railroad Company; Georgetown & Tennalytown Railway Company; Georgia & Florida Railroad; Georgia, Ashburn, Sylvester & Camilla Railway Company; Georgian Bay Tourist Company of Midland, Limited; The Georgia Northern Railway Company; Georgia Rail Road & Banking Company, Operated as the Georgia Railroad by Lessees Atlantic Coast Line Railroad Company and Louisville and Nashville Railroad Company;

Georgia Southern and Florida Railway Company; The Georgia Southwestern and Gulf Railroad Company; Gideon and North Miami Railroad Company; The Gilmore and Pittsburgh Railroad Company, Limited; Glendale and Montrose Railway; Glenfield and Western Railroad Company; Grafton and Upton Railroad Company; Graham County Railroad Company; The Grand River Railway Company; The Grand River Valley Railroad Company; Grand Trunk Railway System (Lines West of Detroit and St. Clair Rivers), comprising the following carriers: The Chicago, Detroit and Canada Grand Trunk Junction Railroad Company (Canadian National Railway Company, Lessee), Cincinnati, Saginaw and Mackinaw Rail Road Company (Canadian National Railway Company, Lessee), Detroit, Grand Haven and Milwaukee Railway Company, Grand Trunk-Milwaukee Car Ferry Company, Grand Trunk Western Railway Company; The Michigan Air Line Railway; Toledo, Saginaw and Muskegon Railway Company; Grasse River Railroad Corporation; Great Northern Railway Company; Great Southern Railroad Company; The Great Western Railway Company; Green Bay and Western Railroad Company; The Greene County Railroad Company; Greenville and Northern Railway Company; Greenwich & Johnsonville Railway Company; Groveton, Lufkin & Northern Railway Company; Gulf & Northern Railway Company; Gulf and Ship Island Railroad Company; Gulf Coast Lines, comprising the following carriers: The Beaumont, Sour Lake & Western Railway Company, Brownsville & Matamoros Bridge Company, New Iberia & Northern Railroad Company, New Orleans, Texas & Mexico Railway Company, The Orange & Northwestern Railroad Company, The St. Louis, Brownsville and Mexico Railway Company; Gulf Colorado and Santa Fe Railway Company; Gulf, Mobile and Northern Railroad Company; Gulfport and Mississippi Coast Traction Company; Gulf, Texas & Western Railway Company (W. Frank Knox, Receiver);

The Hamilton Belt Railway Company; The Hamilton, Grimsby & Beamsville Electric Railway Company; Hampton & Branchville Railroad Company; Hannibal Connecting Railroad Company; Hanover Railway Company; Hardwick & Woodbury Railroad Company; Harriman and Northeastern Railroad Company; Hartford Eastern Railway Company; Hartwell Railway Company; Helena Southwestern Railroad Company; Hickory Valley Railroad Company; High Point, Randleman, Asheboro and Southern Railroad Company; High Point, Thomasville & Denton Railroad Company; Hillsboro and North Eastern Railway Company; Hoboken Manufacturers' Railroad Company; The Hocking Valley Railway Company; Holton Inter-Urban Railway Company; Hoosac Tunnel and Wilmington Railroad Company; Houston and Brazos Valley Railway Company; Houston Belt & Terminal Railway Company; Hudson & Manhattan Railroad Company; Hudson Valley Railway Company; The Huntingdon and Broad Top Mountain Railroad and Coal Company; The Hutchinson and Northern Railway Company;

Illinois Central Railroad Company; Illinois Northern Railway; Illinois Terminal Company, Lessee of Illinois Traction, Inc. (main division), St. Louis and Illinois Belt Railway, St. Louis Electric Terminal Railway Company, The St. Louis, Troy and Eastern Rail Road Company; The Indiana, Columbus and Eastern Traction Company (J. H. McClure, Receiver); Indiana Harbor Belt Railroad Company; Indiana Northern Railway Company; The Indianapolis Union Railway Company; Indian Valley Railroad Company; Inter-California Railway Company; Intermountain Railway Company; Inter-

national-Great Northern Railroad Company; International Mercantile Marine Company; International Railway Company; Interstate Railroad Company; Iowa Transfer Railway Company; The Ironton Railroad Company (Lehigh Valley Railroad Company, Reading Company, Lessees);

Jamestown, Westfield and Northwestern Railroad Company; Jefferson & Northwestern Railway Company; Jefferson Southwestern Railroad Company; Johnstown and Stony Creek Rail Road Company;

The Kanawha Central Railway Company; Kanawha, Glen Jean and Eastern Railroad Company; Kane and Elk Railroad Company; The Kansas and Missouri Railway and Terminal Company; the Kansas & Oklahoma Railway Company (H. J. Duvall, Receiver); The Kansas and Sidell Railroad Company; Kansas City, Clay County and St. Joseph Railway Company; The Kansas City Connecting Railroad Company; The Kansas City, Kaw Valley and Western Railroad Company; The Kansas City Southern Railway Company; Kansas City Terminal Railway Company; Kansas, Oklahoma & Gulf Railway Company; *Kelley's Creek and Northwestern Railroad Company; Kelly's Creek Railroad Company; Kennebec Central Railroad Company; Kentucky & Indiana Terminal Railroad Company; Kentucky & Tennessee Railway; Kentucky, Rockcastle and Cumberland Railroad Company; The Kettle Valley Railway Company; Kewaunee, Green Bay and Western Railroad Company; Kishacoquillas Valley Railroad Company; Knox Railroad Company; Kosciusko & South Eastern Railroad Company;

Lackawanna and Wyoming Valley Railroad Company; Lacombe and North Western Railway Company; La Crosse and Southeastern Railway Company; Lake Champlain and Moriah Rail Road Company; The Lake Erie and Eastern Railroad Company; the Lake Erie and Fort Wayne Railroad Company; The Lake Erie and Northern Railway Company; Lake Erie, Franklin & Clarion Railroad Company; The Lake Providence, Texarkana & Western Railroad; The Lake Shore Electric Railway Company; The Lakeside and Marblehead Railroad Company; Lake Superior & Ishpeming Railroad Company; The Lake Superior Terminal and Transfer Railway Company of the State of Wisconsin; The Lake Terminal Railroad Company; Lancaster and Chester Railway Company; L'Anguille River Railway Company; Laona & Northern Railway Company; Laramie North Park & Western Railroad Company; The LaSalle and Bureau County Railroad Company; Laurinburg and Southern Railroad Company; Lawndale Railway & Industrial Company; The Leavenworth & Topeka Railroad Company; The Leavenworth Terminal Railway and Bridge Company; Leesville, Slagle and Eastern Railway Company; The Lehigh and Hudson River Railway Company; Lehigh and New England Railroad Company; Lehigh Valley Railroad Company; Ligonier Valley Rail Road Company; The Lima & Defiance Railroad Company; The Lima Toledo Railroad Company; Lime Rock Railroad Company; Linville River Railway Company; Litchfield and Madison Railway Company; The Lithonia and Arabia Mountain Railway Company; The Little River Railroad Company; Live Oak, Perry & Gulf Railroad Company; The London and Port Stanley Railway; The Long Island Rail Road Company; Longview, Portland & Northern Railway Company; The Lorain and Southern Railroad Company; The Lorain & West Virginia Railway Company; Los Angeles & Salt Lake Railroad Company; Los Angeles Junction Railway Company; Louisiana & Arkansas Railway Company; The Louisiana and North West Railroad Company; The Louisiana & Pine Bluff Railway Company; Louisiana Railway & Navigation Company of Texas; Louisiana Southern Railway Company; Louisville &

Jeffersonville Bridge and Railroad Company; Louisville and Nashville Railroad Company; Louisville and Wadley Railroad Company; Louisville, New Albany & Corydon Railroad Company; The Lowville and Beaver River Railroad Company; Ludington & Northern Railway; Lufkin, Hemphill and Gulf Railway Company;
Macomb, Industry & Littleton Railway Company; Macon, Dublin & Savannah Railroad Company; Madison, Illinois & St. Louis Railway Company; Magma Arizona Railroad Company; Maine Central Railroad Company; The Mammoth Cave Railroad Company; Manchester and Oneida Railway Company; *Manila & Southwestern Railway; Manistee and North-Eastern Railway Company (The Michigan Trust Company, Receiver); Manistee & Repton Railroad Company, Inc.; Manistique and Lake Superior Railroad Company; The Manitou and Pike's Peak Railway Company; The Mansfield Railway & Transportation Company; Manufacturers' Junction Railway Company; Manufacturers Railway Company (St. Louis); The Marathon County Railway Company; *The Marcellus & Otisco Company, Inc.; The Marianna & Blountstown Railroad Company; Marinette, Tomahawk & Western Railroad Company; *Marion & Rye Valley Railway Company; Marion and Southern Railroad Company; Marion Railway Corporation; Marshall, Elysian Fields and Southeastern Railway Company; Maryland and Delaware Coast Railway Company; Maryland and Pennsylvania Railroad Company; Mascot and Western Railroad Company; Mason City and Clear Lake Railroad Company; Massachusetts Northeastern Street Railway Company; The Massena Terminal Railroad Company; Mauch Chunk Switch-back Railway Company; Maxton, Alma and Southbound Railroad Company; McCloud River Railroad Company; McKeesport Connecting Railroad Company; Miami Mineral Belt Railroad Company; The Michigan Air Line Railway; The Michigan Central Railroad Company; Middleburgh & Schoharie Rail Road; Middletown and Unionville Railroad Company; Midland Continental Railroad; The Midland Railway Company of Manitoba; The Midland Terminal Railway Company; Midland Valley Railroad Company; Milstead Railroad Company; Minarets and Western Railway Company; Mineral Point and Northern Railway Company; Mineral Range Railroad Company; Minneapolis & Rainy River Railway Company; The Minneapolis & St. Louis Railroad Company (W. H. Bremner, Receiver); Minneapolis, Anoka and Cuyuna Range Railway Company (Edward P. Burch, Receiver); Minneapolis Eastern Railway Company; Minneapolis, Northfield and Southern Railway; Minneapolis, Red Lake and Manitoba Railway Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Minnesota and International Railway Company; Minnesota, Dakota & Western Railway Company; Minnesota Northwestern Electric Railway Company; The Minnesota Transfer Railway Company; Minnesota Western Railroad Company; Mississippi & Alabama Railroad Company; Mississippi & Western Railroad Company; Mississippian Railway; Mississippi Central Railroad Company; Mississippi Eastern Railway Company; Mississippi Export Railroad Company; Mississippi Southern Railroad; Missouri and Illinois Bridge and Belt Railroad Company; Missouri and North Arkansas Railway Company (W. Stephenson, Receiver); Missouri-Illinois Railroad Company; Missouri-Kansas-Texas Railroad Company; Missouri-Kansas-Texas Railroad Company of Texas; Missouri Pacific Railroad Company; Missouri Pacific Railroad Corporation in Nebraska; Missouri Southern Railroad Company; Mobile and Ohio Rail Road Company; Modesto and Empire Traction

Company; The Monongahela Connecting Railroad Company; The Monongahela Railway Company; Monongahela West Penn Public Service Company; Monson Railroad Company; Montana Railroad (Ark); Montana Western Railway Co.; Montana, Wyoming & Southern Railroad Company; Montour Railroad Company; Montpelier and Wells River Railroad; Morehead and North Fork Railroad Company; Morgan & Fentress Railway Company; Morristown & Erie Railroad Company; Moscow, Camden & San Augustine Railroad; Moshassuck Valley Railroad Company; Mount Hood Railroad Company; Mount Hope Mineral Railroad Company; Mount Jewett, Kinzua and Riterville Railroad Company; Muncie and Western Railroad Company; The Muncie Belt Railway Company; Murfreesboro-Nashville Southwestern Railway Company; Muskogee Electric Traction Company;

The Nacogdoches & Southeastern Railroad Company; Naplerville Junction Railway Company; The Narragansett Pier Railroad Company; Nashville and Atlantic Railroad Company; The Nashville, Chattanooga & St. Louis Railway; Natchez & Southern Railway Company; The Natchez, Columbia and Mobile Railroad Company; The Natchez, Urania and Ruston Railway Company; Nelson & Albemarle Railway Company; The Nelson and Fort Sheppard Railway Company; The Nevada Central Railroad Company; Nevada Copper Belt Railroad Company (J. I. Wilson, Receiver); Nevada Northern Railway Company; Newark Terminal & Transportation Co.; Newaukum Valley Railroad Company; The Newburgh and South Shore Railway Company; The Newell Bridge & Railway Company; New Haven & Dunbar Railroad Company; New Iberia & Northern Railroad Company; The New Jersey and New York Railroad Company; New Jersey, Indiana & Illinois Railroad Company; The New Mexico Midland Railway Company; New Orleans and Lower Coast Railroad Company; New Orleans and Northeastern Railroad Company; New Orleans Great Northern Railroad Company; New Orleans, Natalbany and Natchez Railway Company; *New Orleans Public Belt Railroad; New Orleans Terminal Company; New Orleans, Texas & Mexico Railway Company; The New York and Long Branch Railroad Company; New York and Pennsylvania Railway Company; New York and Stamford Railway Company; The New York Central Railroad Company; The New York, Chicago and St. Louis Railroad Company; The New York Connecting Rail Road Company; New York Dock Railway; The New York, New Haven and Hartford Railroad Company; New York, Ontario and Western Railway Company; New York State Railways (Rochester Lines); New York, Susquehanna and Western Railroad Company; New York, Westchester & Boston Railway Company; *Nezperce & Idaho Railroad Company; Niagara Junction Railway Company; Norfolk and Portsmouth Belt Line Railroad Company; Norfolk and Western Railway Company; Norfolk Southern Railroad Company; Northampton and Bath Railroad Company; The North and South Railway Company (R. H. McNeley, Receiver); North Brookfield Railroad Company; Northeast Oklahoma Railroad Company; Northern Alabama Railway Company; The Northern Ohio Railway Company; Northern Pacific Railway Company; The Northern Pacific Terminal Company of Oregon; North Louisiana & Gulf Railroad Company; Northwestern Pacific Railroad Company; Northwestern Railroad Company of South Carolina; The Northwestern Terminal Railroad Company; Norton and Northern Railway; Norwood & St. Lawrence Railroad Company;

Oahu Railway and Land Company; The Ogden Union Railway and Depot Company; Ohio & Kentucky Railway Company (Guy W. Leslie, Receiver); The Ohio Public Service Company; The Ohio River and Western Railway

Company; Ohio Valley Electric Railway Company; Oklahoma City-Ada-Atoka Railway Company; Oklahoma City Junction Railway Company; Oklahoma Railway Company; Oklahoma-Southwestern Railway Co.; Oklahoma Union Railway Company (J. A. Frates and F. A. Bodovitz, Receivers); Okmulgee Northern Railway Company; Omaha, Lincoln and Beatrice Railway Company; Oneida & Western Railroad Company; Ontonagon Railroad Company; The Orange & Northwestern Railroad Company; Oregon, California & Eastern Railway Company; Oregon Electric Railway Company; Oregon Pacific and Eastern Railway Company; Oregon Short Line Railroad Company; Oregon Trunk Railway; Oregon-Washington Railroad & Navigation Company; Osage Railway Company; The Oshawa Railway Company; Ouachita and North Western Railroad Company; The Owasco River Railway; Pacific and Idaho Northern Railway Company; Pacific Coast Railroad Company (Washington); Pacific Coast Railway Company (California); Pacific Electric Railway Company; Pacific Great Eastern Railway Company; Pacific Northwest Traction Company; Paducah & Illinois Railroad Company; Panhandle and Santa Fe Railway Company; Paris and Mt. Pleasant Railroad Co.; The Parral and Durango Railroad Company; Pearl River Valley Railroad Company; The Pecos Valley Southern Railway Company; Peninsular Railway Company; Pennsylvania and Atlantic Railroad Company; The Pennsylvania Railroad Company; Peoria and Pekin Union Railway Company; Peoria, Hanna City & Western Railway Co.; Pere Marquette Railway Company; Perkiomen Railroad Company; Peru, La Salle and Deer Park Railroad Company; Petaluma and Santa Rosa Railroad Company; The Philadelphia Belt Line Railroad Company; Philadelphia, Bethlehem and New England Railroad Company; Pickens Railroad Company; Piedmont and Northern Railway Company; Pigeon River Railroad Company; Pittsburgh, Allegheny & McKees Rocks Railroad Company; The Pittsburgh and Lake Erie Railroad Company; Pittsburgh and Ohio Valley Railway Company; The Pittsburgh & Shawmut Railroad Company; Pittsburgh & Susquehanna Railroad Company; The Pittsburgh & West Virginia Railway Company; Pittsburgh, Harmony, Butler and New Castle Railway Company; Pittsburgh, Chartiers & Youghiogheny Railway Company; Pittsburg County Railway Company; The Pittsburgh, Lisbon & Western Railroad Company; The Pittsburg, Shawmut & Northern Railroad Company (John D. Dickson, Receiver); Ponchartrain Railroad Company; The Pontiac, Oxford and Northern Railroad Company; Port Angeles Western Railroad Company; Port Huron and Detroit Railroad Company; The Port Huron, St. Clair & Marine City Railway Company (Security Trust Company, Receivers); Portland Terminal Company; Port of Astoria Belt Line Railroad; Port St. Joe Dock and Terminal Railway Company; The Port Utilities Commission of Charleston, S. C.; The Poteau Valley Railroad Company; Prattsburgh Railway Corporation; The Prescott and Northwestern Railroad Company; Preston Railroad Company; Puget Sound & Cascade Railway Company; The Pullman Company; Pullman Railroad Company;

Quakertown & Bethlehem Railroad Company; Quanah, Acme & Pacific Railway Company; Quincy, Omaha & Kansas City Railroad Company; Quincy Railroad Company;

Rahway Valley Company (Rahway Valley Company, Lessee); The Railway Transfer Company of the City of Minneapolis; Raleigh & Charleston Railroad Company; Rapid City, Black Hills & Western Railroad Company; The Rapid Railroad Company (Security Trust Company, Receivers); The Rapid Rail-

way Company (Security Trust Company, Receivers); Rapid Railway System (Security Trust Company, Receivers), composed of The City Electric Railway Company of Port Huron, Detroit Mt. Clemens & Marine City Railway, The Port Huron, St. Clair & Marine City Railway Company, The Rapid Railroad Company, The Rapid Railway Company; Raquette Lake Railway Company; Raritan River Rail Road Company; Ray and Gila Valley Railroad Company; Reader Railroad; Reading Company; Red River and Gulf Railroad; Richmond, Fredericksburg and Potomac Railroad Company; Rio Grande and Eagle Pass Railway Company; The Rio Grande Southern Railroad Company; The River Terminal Railway Company; The Roberval and Saguenay Railway Company; Roby & Northern Railroad Company; *Rochester & Manitou Railroad; Rochester and Syracuse Railroad Company, Inc.; Rochester, Lockport & Buffalo Railroad Corporation; Rockcastle River Railway Company; Rockingham Railroad Company; Rock Island, Memphis Terminal Railway Company; Rock Island Southern Railway Co.; Rock Port, Langdon & Northern Railway Company; Roscoe, Snyder and Pacific Railway Company; Rosslyn Connecting Railroad Company; Rowlesburg & Southern Railroad Company; Rutland Railroad Company;

Sabine & Neches Valley Railway Company; *Sacramento Northern Railway; St. Francois County Railroad Company; The St. Johnsbury & Lake Champlain Railroad Company; St. Johns River Terminal Company; The St. Joseph and Grand Island Railway Company; St. Joseph Belt Railway Company; St. Joseph Terminal Railroad Company; St. Louis & Belleville Electric Railway Company; St. Louis and East St. Louis Electric Railway Company; St. Louis and Hannibal Railroad Company; The St. Louis and O'Fallon Railway Company; St. Louis and Ohio River Railroad; St. Louis Belt and Terminal Railway Company; The St. Louis, Brownsville and Mexico Railway Company; St. Louis Electric Terminal Railway Company; St. Louis Merchants Bridge Terminal Railway Company; St. Louis, San Francisco and Texas Railway Company; St. Louis-San Francisco Railway Company; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; The St. Louis Transfer Railway Company; The St. Louis, Troy and Eastern Rail Road Company; St. Marys Railroad Company; St. Paul Bridge & Terminal Railway Company; Salt Lake and Utah Railroad Company (Henry I. Moore and D. P. Abercrombie, Receivers); Salt Lake, Garfield and Western Railway Company; San Antonio Southern Railway Company; San Antonio, Uvalde & Gulf Railroad Company; San Benito and Rio Grande Valley Railway Company; Sandersville Railroad Company; San Diego and Arizona Railway Company; Sand Springs Railway Company; Sandy River and Rangeley Lakes Railroad (Josiah S. Maxcy and Herbert S. Wing, Receivers); San Francisco, Napa and Calistoga Railway; San Joaquin & Eastern Railroad Company; The San Luis Central Railroad Company; Santa Fe Northwestern Ry. Co.; Santa Maria Valley Railroad Company; Savannah and Atlanta Railway (Charles E. Gay, Jr., Receiver); Savannah and Statesboro Railway Company; Schoharie Valley Railway Company; Schomberg & Aurora Railway; The Scioto Valley Railway and Power Company; Scootac Railway Company; Scranton, Montrose & Binghampton Railroad Company; Seaboard Air Line Railway Company; The Sharpsville Railroad Company (G. M. McIlvain, Receiver); Shearwood Railway Company; Sheffield and Tionesta Railway Company; Shelburne Falls and Colrain Street Railway Company; Shelby County Railway Company; Shelby Northwestern Railway Company; Shreveport, Houston & Gulf Railroad Company; The Sibley, Lake Bisteneau & Southern Railway

Company; Sierra Railway Company of California; The Sievern and Knoxville Railroad Company; The Silverton Northern Railroad Company; Sioux City Terminal Railway Company; Skaneateles Railroad Company; The Sligo & Eastern Railroad Company; Smithonia and Dunlap Railroad Company; South Brooklyn Railway Company; South Buffalo Railway Company; Southern Illinois Railway and Power Co.; Southern Michigan Railway Company (R. R. Smith and L. V. Bower, Receivers); Southern New York Railway, Incorporated; Southern Pacific Company; Southern Pacific Railroad Company of Mexico; Southern Railway Company; Southern Railway Company (St. Louis-Louisville Divisions); The South Georgia Railway Company; South Manchester Railroad Company; South San Francisco Belt Railway; The South Shore Railroad Company; The Southwest Missouri Railroad Company (F. C. Wallower and Harrison C. Rogers, Receivers); Spokane International Railway Company; Spokane, Portland and Seattle Railway Company; The Springfield Terminal Railway Company (Illinois); Springfield Terminal Railway Company (Vermont); The Staten Island Rapid Transit Railway Company; Statesboro Northern Railway (Georgia and Florida Railroad, Lessee); State University Railroad Company; Steelton & Highspire Railroad Company; Sterling Mountain Railway Company; The Steubenville East Liverpool & Beaver Valley Traction Company; The Stewartstown Railroad Company; Stockton Terminal and Eastern Railroad; Stone Harbor Railroad Company; Strasburg Railroad Company; Strouds Creek and Muddlety Railroad Company; Sugar Land Railway Company; Sumpter Valley Railway Company; Sumter and Choctaw Railway Company; Suncook Valley Railroad; Sunset Lighterage Corporation; Sunset Railway Company; Superior & Southeastern Railway Company; Susquehanna and New York Railroad Company; Susquehanna River & Western Railroad Company; Sylvania Central Railway Company;

Tabor and Northern Railway Company; Talbotton Railroad Company; Tallulah Falls Railway Company (J. F. Gray, Receiver); Tama and Toledo Railroad Company; Tampa Northern Railroad Company; Tampa Southern Railroad Company; Tavares and Gulf Railroad Company; Tennessee & North Carolina Railway Company; Tennessee, Alabama and Georgia Railway; Tennessee and Carolina Southern Railway Company; Tennessee Central Railway Company; Tennessee, Kentucky & Northern Railroad Company; Tennessee Railroad Company; Tennessee River Navigation Company; Tennessee Western Railroad Company; Terminal Railroad Association of St. Louis; Terre Haute, Indianapolis and Eastern Traction Company; Texarkana and Fort Smith Railway Company; Texas and New Orleans Railroad Company; The Texas and Pacific Railway Company; Texas City Terminal Railway Company; The Texas Mexican Railway Company; Texas, Oklahoma & Eastern Railroad Company; Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans; Texas Short Line Railway Company; Texas Southeastern Railroad Company; Thornton and Alexandria Railway Company; The Thousand Islands Railway Company; The Ticonderoga Railroad Company; Tidewater Southern Railway Company; Tijuana and Tecate Railway Company; Tionesta Valley Railway Company; The Toledo & Indiana Railroad Company; Toledo and Western Railway Company; The Toledo, Angola & Western Railway Company; The Toledo, Bowling Green and Southern Traction Company; The Toledo, Fostoria & Findlay Railway Company; Toledo, Peoria & Western Railroad; Toledo, Saginaw and Muskegon Railway Company; The Toledo Terminal Railroad Company; Tonopah and Goldfield Railroad Company; Tonopah and Tide-

water Railroad Company; Tooele Valley Railway Company; The Toronto, Hamilton and Buffalo Railway Company; The Townsville Railroad Company; Tremont & Gulf Railway Company; Trenton-Princeton Traction Company; The Trinity and Brazos Valley Railway Company (John A. Hulen, Receiver); Trinity Valley & Northern Railway Company; Trinity Valley Southern Railroad Company; Trona Railway Company; Tuckaseegee and Southeastern Railway Company; The Tuckerton Railroad Company; Tucson, Cornelia and Gila Bend Railroad Company; Tuscarora Valley Railroad Company; The Tuskegee Railroad Company;

The Uintah Railway Company; The Ulster and Delaware Railroad Company; Unadilla Valley Railway Company; The Union Depot Company of St. Louis; Union Freight Railroad Company (Boston, Mass.); Union Pacific Railroad Company; Union Railroad Company (Pittsburgh, Pa.); Union Railway Company (Memphis, Tenn.); The Union Stock Yard and Transit Company of Chicago; The Union Terminal Company (Dallas, Texas); Union Terminal Railway Company of St. Joseph, Mo.); The Union Traction Company (Kansas), (John F. Layng, Receiver); Union Traction Company of Indiana (Arthur W. Brady, Receiver); United Electric Railways Company; United Railway Company (Uniontown, Pa.); United Railways Company (Portland, Oreg.); The United States and Canada Rail Road Company (Canadian National Railway Company, Lessee); Unity Railways Company; Upper Merion and Plymouth Railroad Company; The Ursina and North Fork Railway Company; The Utah Idaho Central Railroad Company; Utah Railway Company; Uvalde & Northern Railway Company;

Valley and Siletz Railroad Company; Valley Railroad Company (of Pa.); The Valley Railroad Company (of Va.); The Vancouver and Lulu Island Railway Company; Verde Tunnel and Smelter Railroad Company; Virginia and Carolina Southern Railroad Company; Virginia & Truckee Railway; Virginia Blue Ridge Railway; The Virginian Railway Company; Virginia Southern Railroad Company (W. H. Sitterding, Receiver); Visalia Electric Railroad Company;

Wabash Railway Company; Waco, Beaumont, Trinity & Sabine Railway Company; Wadley Southern Railway Company; Walla Walla Valley Railway Company; Ware Shoals Railroad Company; Warren & Ouachita Valley Railway Company; Warren & Saline River Railroad Company; Warrenton Rail Road Company; Washington & Lincolnton Railroad Company; Washington and Old Dominion Railway; The Washington & Rockville Railway Company of Montgomery County; Washington, Baltimore and Annapolis Electric Railroad Company; The Washington, Brandywine and Point Lookout Railroad Company; Washington, Idaho & Montana Railway Company; The Washington Interurban Railroad Company; Washington Railway & Electric Company; Washington Run Railroad Company; Waterhouse, Frank, and Company of Canada, Limited; Waterloo, Cedar Falls and Northern Railway Company; The Waterville Railway Company; Waynesburg and Washington Railroad Company; The Weatherford, Mineral Wells and Northwestern Railway Company; Western Allegheny Railroad Company; Western Maryland Railway Company; The Western Pacific Railroad Company; The Western Railway of Alabama; The Westfield Railroad Company; West Jersey and Seashore Railroad Company; West Shore Railroad (The New York Central Railroad Company, Lessee); West Virginia Midland Railway Company; West Virginia Northern Railroad Company; Wharton and Northern Railroad Company; The Wheeling and Lake Erie Railway Company; White River Railroad

Company (of Vermont) (J. A. Cannon, Receiver); White Sulphur Springs & Yellowstone Park Railway Company; The Wichita Falls & Northwestern Railway Company of Texas; Wichita Falls & Southern Railroad Company; The Wichita Northwestern Railway Company (O. P. Byers, Receiver); The Wichita Valley Railway Company; Wiggins Ferry Company; Wildwood and Delaware Bay Short Line Railroad Company; Wilkes-Barre and Eastern Railroad Company; The Wilkes-Barre and Hazleton Railway Company; Willamette Valley & Coast Railroad Co.; Williamsport & North Branch Railway Co.; Wilmington, Brunswick & Southern Railroad Company; Winchester & Western Railroad Company (Adrian C. Nadenbousch, D. H. Sencindiver, and Herbert S. Larrick, Receivers); The Windsor, Essex and Lake Shore Rapid Railway Company; The Winfield Railroad Company; Winifrede Railroad Company (Frank B. Stewart and V. L. Black, Receivers); Winston-Salem Southbound Railway Company; Wiscasset, Waterville & Farmington Railway Company; Wisconsin & Michigan Railroad Company; Wood River Branch Railroad Company; Woodstock Railway Company; Wrightsville and Tennille Railroad Company; Wyandotte Southern Railroad Company; Wyandotte Terminal Railroad Company; Wyoming Railway Company;

Yadkin Railroad Company; The Yale Sheet Line Railroad Company; The Yazoo and Mississippi Valley Railroad Company; York Utilities Company; Yosemite Valley Railroad Company; The Youngstown and Northern Railroad Company; The Youngstown & Ohio River Railroad Company; Yreka Railroad Company;

East St. Louis & Carondelet Railway Company; East St. Louis Belt Railroad Company; Fort Wayne & Northwestern Railway Company; Granite City & Madison Belt Line Railroad Company; Illinois Transfer Railroad Company; Interstate Car Transfer Company; Madison, Illinois & St. Louis Railway Company; Monson Railroad Company; St. Louis Bridge Company; St. Louis Merchants Bridge Company; St. Louis Terminal Railway Company; Salt Lake & Ogden Railway Company; Terminal Railroad of East St. Louis; Tunnell Railroad of St. Louis; The Union Railway & Transit Company of Illinois; West Chester Kennett & Wilmington Electric Railway Company; Munising, Marquette & Southeastern Railway Company; St. Louis Bridge & Terminal Railway Company; Baltimore & Cumberland Valley Railroad Company; Baltimore & Cumberland Valley Railway Company; Baltimore & Cumberland Railroad Extension Company; Baltimore & Harrisburg Railway Company; Baltimore & Harrisburg Railway Company (Eastern Extension); Baltimore & Harrisburg Railway Company (Western Extension); Connellsville & Monongahela Railway Company; Joliet & Blue Island Railway Company; Meadville, Conneaut Lake & Linesville Railroad Company; Monongahela Southern Railroad Company; Pittsburgh, Bessemer & Lake Erie Railroad Company; St. Clair Terminal Railroad Company; Sharon Connecting Railroad Company; Sharon Railway Company; Union Railroad Company of Pennsylvania; Youghiogheny Northern Railway Company; Fort Smith Suburban Railway Company; Iron Mountain Railroad Company of Memphis; Little Rock Junction Railway; Marion & Harrisburg Railway Company; Marion & Johnston City Railway Company; Central Union Depot & Railway Company of Cincinnati; Chester & Becket Railroad Company; Coos Valley Railroad Company; Dayton Union Railway Company; Delaware, Susquehanna & Schuylkill Railroad Company; Dexter & Newport Railroad Company; Dexter & Piscataquis Railroad Company; Eastern Maine Railroad Company; Easton & Northern Railroad Company; European & North American Railway; Fort

Wayne, Cincinnati & Louisville Railroad Company; Kanawha & Michigan Railway Company; Lackawanna & Montrose Railroad Company; Lake Erie, Alliance & Wheeling Railroad Company; Lake Erie & Western Railroad Company; Loyalsock Railroad Company; New York & Ottawa Railway Company; Ottawa & New York Railroad Company; Peoria & Eastern Railway Company; Portland & Ogdensburg Railway; Portland & Rumford Falls Railroad; Portland & Rumford Falls Railway; The Chicago, Lake Shore & Eastern Railway Company; Rumford Falls & Rangeley Lakes Railway Company; St. Lawrence & Adirondack Railway Company; Schuylkill & Lehigh Valley Railroad Company; Sullivan County Railroad; Sussex Railroad Company; Syracuse, Binghamton & New York Railroad Company; Toledo & Ohio Central Railway Company; Troy Union Railroad Company; Upper Coos Railroad Company (New Hampshire); Upper Coos Railroad Company (Vermont); Vermont Valley Railroad; Zanesville & Western Railway Company; Benton & Fairfield Railroad Company; Bedford Stone Railway Company; Bayfield Transfer Railway Company; Amsterdam, Chuctanunda & Northern Railroad Company; Chicago, Ottawa & Peoria Railway Company; Bloomington, Decatur & Champaign Railroad; Danville, Urbana & Champaign Railway Company; Illinois Central Traction Company; St. Louis, Springfield & Peoria Railroad; Cincinnati, International Railroad Company; Covington & Cincinnati Elevated Railroad, Transfer & Bridge Company; Oklahoma Belt Railroad Company; Alabama Northern Railway; Batesville Western Railway Company; Bowdon Railway Company; Brooklyn Eastern District Terminal; Carolina Northern Railway Company; Craig Mountain Lumber Company's Railway; Carlton & Coast Railroad Company; Little River Railroad Company of Tennessee; Montana Railroad; Roanoke Railway Company; Roaring Fork Railroad Company; Spokane & Eastern Railway & Power Company; Garden Bay Railway Company; Houlton Branch Railroad Company; Newport & Richford Railroad Company; Arizona Eastern Railroad Company; Alamogordo & Sacramento Mountain Railway Company; Burr's Ferry, Browndell & Chester Railway Company; Central Pacific Railway Company; Columbia & Palouse Railroad Company; Columbia River & Oregon Central Railroad Company; Columbia Southern Railway Company; Colusa & Hamilton Railroad Company; Dawson Railway Company; Des Chutes Railway Company; El Paso & Northeastern Railroad Company; El Paso & Rock Island Railway Company; El Paso & Southwestern Company; El Paso & Southwestern Railroad Company of Texas; El Paso & Southwestern Railroad Company; Hanford & Summitt Lake Railway Company; Idaho Northern Railroad Company; Idaho Southern Railroad Company; Lake Creek & Coeur d'Alene Railway Company; Leavenworth Depot & Railroad Company; Los Angeles & Pacific Company; Mojave & Bakersfield Railroad Company; New Mexico & Arizona Railroad Company; Northwestern Railroad Company; Oregon & Washington Railroad Company; Oregon & California Railroad Company; Oregon Railroad & Navigation Company; Oregon, Washington & Idaho Railroad Company; Phoenix & Eastern Railway Company; Porterville & Northeastern Railway Company; Richmond Belt Railway; Sabine & Northern Railroad Company; St. Joseph & Grand Island Railway Company; Southern Pacific Railroad Company; South Pacific Coast Railway Company; Spokane Union Depot Company; Tucson & Nogales Railroad Company; Umatilla Central Railroad Company; Walla Walla & Columbia River Railway Company; Willamette Pacific Railway Company;

Baton Rouge Hammond & Eastern Railroad Company; Blue Island Railroad Company; Richmond & Macklenburg Railroad Company; Woodstock & Blockton Railway Company; Delta Southern Railway Company; Elberton Southern Railway Company; Georgia Midland Railway Company; Hawkinsville, Florida & Southern Railway Company; Mobile & Birmingham Railroad Company; North Carolina Midland Railroad Company; North & South Carolina Railroad Company; Augusta Belt Railway Company; Belt Line Railway of Alabama; Central Railroad Company of South Carolina; East & West Coast Railway; Lexington Terminal Railroad Company; Milledgeville Railway Company; South Carolina Pacific Railroad Company; Western & Atlantic Railroad Company; Wilmington Railway & Bridge Company; Camden Railroad Company; Muscatine North & South Railway Company; Wichita Northwestern Railway Company; Arcadia & Betsey River Railway Company; Chicago Junction Railway; The Cincinnati, Lawrenceburg and Aurora Electric Street Railroad Company; Clarion River Railway Company; Coeur D'Alene Southern Railroad; Port Townsend Southern Railroad Company; St. Louis and Illinois Belt Railway; Big Fork & Northern Railway Company; Chicago, Memphis & Gulf Railway Company; California, Arizona & Santa Fe Railway Company; Canton, Aberdeen & Nashville Railroad Company in Alabama; Chicago, St. Louis & New Orleans Railroad Company; Columbus, Newark & Zanesville Electric Railway Company; Dubuque & Sioux City Railroad Company; Eastern Railway Company of New Mexico; Gulf & Interstate Railway Company of Texas; Helm & Northwestern Railroad Company; Joliet & Chicago Railroad Company; Louisiana & Missouri River Railroad Company; New Jersey & Staten Island Ferry Company; North Yakima & Valley Railway Company; Oil Fields & Santa Fe Railway Company; Omaha Bridge & Terminal Railway Company; Pecos & Northern Texas Railway Company; Pecos River Railroad Company; Rio Grande & El Paso Railway Company; Rocky Mountain & Santa Fe Railway Company; Scottdale Connecting Railroad Company; South Plains & Santa Fe Railway Company; Sunflower & Eastern Railway Company; Southern Kansas Railway Company of Texas; St. Louis, Belleville & Southern Railway Company; Texas & Gulf Railway Company; Union Depot Company of Kansas City, Missouri; Sidel & Olney Railroad Company; Depue & Northern Railroad Company; San Francisco & Oakland Terminal Railway Company;

Akron Union Passenger Depot Company; Baltimore & New York Railroad Company; Baltimore & Ohio & Chicago Railroad Company (Illinois); Baltimore & Ohio & Chicago Railroad Company (Ohio & Indiana); Baltimore & Ohio Connecting Railroad Company; Baltimore & Ohio Railroad Company in Pennsylvania; Baltimore & Ohio Southwestern Railroad Company; Baltimore & Philadelphia Railroad Company; Baltimore Belt Railroad Company; Coal & Coke Railway Company; Confluence & Oakland Railroad Company; Elwood Short Line Railroad Company; Fairmont Morgantown & Pittsburgh Railroad Company; Hampshire Southern Railroad Company; Hardman's Branch Railroad Company; Lancaster Cecil & Southern Railroad Company; Metropolitan Southern Railroad Company; Ohio & Little Kanawha Railroad Company; Pittsburgh Junction Railroad Company; Pittsburgh Western Railroad Company; Quemahoning Branch Railroad Company; Sandyville & Waynesburg Railroad Company; Schuylkill River East Side Railroad Company; Smithfield & Masontown Railroad Company; Staten Island Railway Company; Scottdale Connecting Railroad Company; Washington & Western Railroad Company; Washington County Railroad

By the commission

[SEAL] GEORGE B. McGINTY,

Secretary.

[fols. 4-6] IN UNITED STATES DISTRICT COURT

[Title omitted]

ACKNOWLEDGMENT OF SERVICE—Filed Sept. 20, 1930

To the United States of America:

Service is herewith made upon you of the petition filed in the above entitled cause in the District Court of the United States for the Northern District of Illinois, Eastern Division, on September 19, 1930.

F. H. Towner, Solicitor for Plaintiffs.

Service of the above mentioned petition is hereby acknowledged this 20 day of September, A. D. 1930.

William D. Mitchell, Attorney General of the United States.

[fols. 7 & 8] IN UNITED STATES DISTRICT COURT

[Title omitted]

ACKNOWLEDGMENT OF SERVICE—Filed Sept. 22, 1930

To Interstate Commerce Commission:

Service is herewith made upon you of the petition filed in the above entitled cause in the District Court of the United States for the Northern District of Illinois, Eastern Division, on September 19, 1930.

F. H. Towner, Solicitor for Plaintiffs.

Service of the above mentioned petition is hereby acknowledged this 20 day of September, A. D. 1930.

Interstate Commerce Commission, by ——, Chief Counsel.

[fol. 9] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed Oct. 6, 1930

The Interstate Commerce Commission, one of the defendants in the above-entitled suit, now and at all times

hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioners' petition contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I.

Answering Paragraphs (1) and (2) of the petition, the Commission admits, for the purposes of this suit, that the allegations therein contained are true.

[fol. 10]

II

Answering Paragraphs (3) to (13), inclusive, of the petition, the Commission admits and alleges that upon its own motion by an order dated January 4, 1926, referred to in Paragraph (3) of the petition, it instituted a proceeding entitled Docket No. 17801, Rules for Car Hire Settlement; by that order the Commission reopened and consolidated with said proceeding, the certain other proceedings enumerated in Paragraph (3) of the petition and by a subsequent order dated June 7, 1926, it reopened and consolidated with the said proceeding those certain other proceedings as set forth in Paragraph (4) of the petition herein; that a great number of railroad companies, including the petitioners herein, were made respondents in said proceeding, Docket No. 17801; that full hearings were had and thereafter the Commission made, entered and served upon all the parties in said proceeding, the report of January 7, 1930, 160 I. C. C. 369, made a part of the petition as Appendix A, to which the Commission respectfully refers the Court for information concerning its findings and requirements in the premises; that subsequently the Commission made, entered and served upon all the parties in said proceeding its supplemental report and order of July 15, 1930, referred to and made a part of the petition as Appendix B, to which the Commission respectfully refers the Court for information concerning its findings and requirements in the premises; that in said proceeding and prior to the making, entering and serving of said reports and order the parties thereto, including the petitioners herein, were, and each of them was, accorded the full hearing provided for by the Interstate Commerce Act; that in said hearings a large

[fol. 11] volume of testimony and other evidence bearing upon the matters covered in said reports and order was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of petitioners herein by their counsel; that at said hearings and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including the particular questions raised by petitioners in this suit, whereupon the Commission determined said matters and entered and served upon all the parties to said proceeding, including the petitioners herein, its said reports and order; that said reports and order included the Commission's findings of fact, decision, conclusions, order and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said reports, the Commission made the findings and stated the conclusions upon which said order is based.

The Commission further alleges that the findings and conclusions in said reports were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceeding as aforesaid; that in making said reports and order it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties to said proceedings by their respective counsel, including all material matters covered by the allegations of the petition herein; that said order of July 15, 1930, was not made or entered either arbitrarily, [fol. 12] or unjustly, or contrary to the relevant evidence, or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in the petition.

Further answering Paragraphs (7) to (11), inclusive, of said petition, the Commission denies that the particular portions of its order therein referred to will have the effect or the consequences averred or set forth in said paragraphs and further denies that the result or effect of the requirements of its order or any part or parts thereof will be to deprive the petitioners and other carriers of their property

without due process of law or without compensation or to confiscate the property of such carriers, or any of them, and further denies that its said order of July 15, 1930, is invalid for any of the reasons set forth in said paragraphs, or for any other reason; and denies that the petitioners will suffer irreparable damage, or any damage, if its said order of July 15, 1930, is not stayed and enjoined.

In answer to Paragraph (12) of the petition, the Commission avers that by its order of September 20, 1930, the effective date of the order of July 15, 1930, was postponed to December 1, 1930.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the petition in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report of January 7, 1930, and the [fol. 13] supplemental report and the order of July 15, 1930, which reports and order are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said petition be dismissed.

Interstate Commerce Commission, by H. L. Underwood, Attorney. Daniel W. Knowlton, of Counsel.

[fols. 14 & 15] *Duly sworn to by Frank McManamy. Jurat omitted in printing.*

[fol. 16] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF UNITED STATES OF AMERICA—Filed Oct. 20, 1930

United States of America, one of the defendants in the above-entitled cause, for answer to the petition filed herein against it answers and says:

I

United States admits for the purposes of this suit that the allegations contained in the opening paragraph and paragraphs numbered (1) and (2) are true;

II

United States, for answer to paragraphs numbered (3) to (13) both inclusive of the petition, admits and alleges the Interstate Commerce Commission upon its own motion by order dated January 4, 1926, instituted the proceeding referred to in said paragraph (3) of the petition entitled Docket No. 17801, Rules for Car Hire Settlement; and that by said order and its order of June 7, 1926, the Commission reopened and consolidated with said proceeding the several proceedings mentioned, and to the extent described, in said [fol. 17] paragraphs (3) and 4) of the petition; that petitioners and numerous other railroad companies were made respondents to said consolidated proceedings; that as alleged in said paragraph (5) the Commission, upon due notice, held several full hearings at which counsel for said railroad companies, including petitioners, appeared, submitted testimony, arguments and briefs; that thereafter the Commission made, entered and served upon all respondents to said proceeding its report of January 7, 1930, made a part of the petition as Appendix A, containing its findings and requirements; that subsequently, as alleged in said paragraph (6) many of said carriers, including petitioners, filed with the Commission a petition for rehearing which said petition the Commission denied on June 9, 1930; that on July 15, 1930, the Commission issued its supplemental report and order referred to and made a part of the petition as Appendix B.

That before making, entering and serving said reports and orders the parties to the proceeding, including the petitioners, were accorded a full hearing provided for by the Interstate Commerce Act; that in said hearing a large volume of testimony and other evidence bearing upon the matters covered in said reports and order was submitted to, heard and considered by the Commission, including testimony and evidence of petitioners; that upon consideration of said testimony, arguments and briefs of the parties, including petitioners, the Commission rendered its said reports and order setting forth its findings of fact, decision, conclusions and requirements in the premises.

United States alleges that the findings and conclusions in said reports were and are fully supported and justified by the evidence submitted and adduced before the commis-

sion in said proceeding; that said order of July 15, 1930, was not made or entered arbitrarily, unjustly or contrary to relevant evidence, or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, and [fol. 18] United States denies each and every allegation to the contrary contained in the petition.

Further answering said paragraph (7) to (11) inclusive, of petition, United States denies that the portions of said order of July 15, 1930, referred to therein will have the effect or the consequences alleges in said paragraphs, and further denies that the result or effect of said order, or any part thereof, will be to deprive petitioners or other carriers of their property without due process of law or without compensation, or to confiscate the property of such carriers, or any of them, and further denies that said order is invalid for any of the reasons set forth in said paragraphs, or for any other reason; and denies that petitioners will suffer irreparable damage or any damage if said order of July 15, 1930, is not suspended or set aside.

III

Except as herein expressly admitted, the United States denies the truth of each and all the allegations contained in the petition in so far they conflict with the allegations herein, or with the statements, or conclusions of fact set forth in said report of January 7, 1930, and said supplemental report and order of July 15, 1930.

Wherefore, having fully answered, United States prays that the petition be dismissed at the costs of petitioners, and for the benefit of such other order or orders as the Court may deem appropriate.

Elmer B. Collins, Special Assistant to the Attorney General. John Lord O'Brian, Assistant to the Attorney General. George E. Q. Johnson, United States Attorney.

[fols. 19 & 20] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

[fol. 21] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF MOTION FOR HEARING—Filed Oct. 22, 1930

To Hon. William D. Mitchell, Attorney General of the United States, Washington, D. C., and Interstate Commerce Commission; Washington, D. C.:

You and each of you are hereby notified that on Wednesday, October 22, 1930, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, we shall appear before the Honorable Charles E. Woodward, Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division, in the room usually occupied by him as a court room in the Federal Building, Chicago, Illinois, and ask the Court to enter an order setting the above entitled cause for hearing at 10 o'clock A. M., on Monday, October 27, 1930, in the court room usually occupied by said Judge Charles E. Woodward, in the Federal Building, at Chicago, Illinois, before the Honorable Evan A. Evans, United States Circuit Judge, the Honorable George A. Carpenter, United States District Judge, and said the Honorable Charles E. Woodward, United States District Judge, a copy of said order being attached hereto; at which time and place you may appear if you see fit.

F. H. Towner, Solicitor for Petitioners.

[fols. 22 & 23] Received a copy of the above and foregoing notice and copy of order therein referred to, this 17th day of October, 1930.

William D. Mitchell, Attorney General of the United States, by Elmer B. Collins, Special Assistant to Atty. Gen.

Received a copy of the above and foregoing notice and copy of order therein referred to this 17th day of October, 1930.

Interstate Commerce Commission, by H. L. Underwood, Principal Attorney.

[fols. 24 & 25] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER SETTING CAUSE—Oct. 22, 1930

On motion of the solicitors for the petitioners herein, and it appearing that due and proper notice hereof has been given to the Interstate Commerce Commission and to the Attorney General of the United States, the defendants herein, it is

Ordered, that the above entitled cause be set for hearing on Monday, October 27, 1930, at 10 o'clock A. M., in the court room usually occupied by me as a court room, in the Federal Building, Chicago, Illinois, before the Honorable Evan A. Evans, United States Circuit Judge, the Honorable George A. Carpenter, United States District Judge, and the undersigned United States District Judge.

Enter.

Charles E. Woodward, United States District Judge.

Dated October 22, 1930.

[fol. 26] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR LEAVE TO INTERVENE—Filed Oct. 27, 1930

To the Honorable the Judges of the District Court for the Northern District of Illinois, Eastern Division:

Now comes the South Manchester Railroad Company and represents that it has an interest in the matters involved in the above entitled proceeding adverse to the interest of the plaintiffs herein, and under authority of section 212 of the Judicial Code, (36 Stat. L. 539) desires to intervene in and become a party defendant to said proceeding, and to file answer therein; and for cause shows:

1. Petitioner is a corporation organized and existing under the laws of the State of Connecticut, having its principal office in the Town of South Manchester, Connecticut, and is engaged as a common carrier by railroad in the transportation of passengers and property. It owns and

operates 1.94 miles of main line track extending from Manchester, Connecticut, to South Manchester, Connecticut, and it also owns and operates 1.21 miles of side track. It has interchange track connections with The New York, New Haven & Hartford Railroad Company at Manchester, Connecticut. Petitioner interchanges carload freight contain-
[fol. 27] ing state and interstate commerce with The New York, New Haven & Hartford Railroad Company, at Manchester, Connecticut, in cars owned by the said carrier and other common carriers by railroad.

2. In October, 1924 petitioner filed a complaint against The New York, New Haven & Hartford Railroad Company with the Interstate Commerce Commission in which it alleged that the rules, regulations and charges governing the interchange of cars between it and the defendant were unjust and unreasonable in violation of the Interstate Commerce Act. This complaint was, by order of the Commission, merged with the investigation described as Docket 17801, Rules for Car-Hire Settlement, which was a general investigation by that Commission into and concerning the rules, regulations and charges governing the interchange of cars between common carriers by railroad within the United States. Petitioner was named as a respondent by the order entered by the Commission instituting that investigation. Petitioner appeared and became a party to that investigation.

3. That the reports and the order of the Interstate Commerce Commission attached to the bill of complaint as Appendix A, entitled Rules for Car-Hire Settlement, 160 I. C. C. 369; 165 I. C. C. 495, require plaintiffs and other common carriers respondents to the investigation by the Commission to establish just and reasonable rules, regulations and charges governing the interchange of cars with petitioner and other railroads; and that if said order is enjoined, annulled or set aside as prayed for by plaintiffs herein your petitioner will be injured.

4. That petitioner further represents that the findings and the order of the Interstate Commerce Commission entered and made in the proceeding described as docket 17801, Rules for Car-Hire Settlement, against which plaintiffs bring this suit, is valid and legal and not in derogation

Company; Washington Terminal Company; Wheeling Pittsburgh & Baltimore Railroad Company; Winchester & Potomac Railroad Company; Winchester & Strasburg Railroad Company; Albana Railroad Bridge Company; Belle Fourche Valley Railroad Company; Chicago, Rhode Island & El Paso Railway Company; Choctaw Oakland & Gulf Railroad Company (Oklahoma); Depue, Ladd & Eastern Railroad Company; Des Plains Valley Railway Company; Fort Smith & Van Buren Railway Company; James River Valley & Northwestern Railway Company; Kansas City, Clinton & Springfield Railway Company; Kansas City, Shreveport & Gulf Terminal Company; Kansas City, Fort Scott & Memphis Railway Company; Keokuk & Des Moines Railway Company; Oklahoma City, Shawnee Interurban Railway Company; Kansas City, Memphis & Birmingham Railroad Company; Macupin County Railway Company; Manitowoc, Green Bay & Northwestern Railway Company; Maywood & Sugar Creek Railway Company; Milwaukee State Line Railway Company; Milwaukee, Sparta & Northwestern Railway Company; Missouri Valley & Bla. Railway & Bridge Company; Peoria & Bureau Valley Railroad Company; Port Arthur Canal & Dock Company; Princeton & Western Railway Company; Rock Island & Dardanelle Railway Company; Rock Island, Arkansas & Louisiana Railroad Company; Rock Island, Stuttgart & Southern Railway Company; St. Louis, Kansas City & Colorado Railroad Company; St. Louis, Peoria & Northwestern Railway Company; St. Paul & Kansas City Short Line Railroad Company; St. Paul & Sioux City Railroad Company; St. Paul Eastern Grand Trunk Railway Company; Winona & St. Peter Railroad; Wolf River Valley Railway Company; Wyoming North Western Railway Company; Cairo & Kanawha Railway Company; Yakutat & Southern Railway Company; Chateaugay Lake Placid Railway Company; Cooperstown & Susquehanna Valley Railway Company;

Allegheny & South Side Railway Company; Bastrap & Lake Providence Railway Company; Central Valley Railroad Company; Detroit Almont & Northern Railroad Company; Evansville & Southern Indiana Traction Company; Indiana, Columbus & Southern Traction Company; Laurel Railway Company; Scranton & Northeastern Railroad Company; Toledo & Indiana Traction Company; Wilkes-Barre Railroad Company; American Electric Railway Association; Michigan & Chicago Railway Company; Northwestern Coal Railway Company; Chicago, Milwaukee & Puget Sound Railway Company; Chicago, Terre Haute & South Eastern Railway Company; Arnot & Pine Creek Railroad Company; Arlington Railroad Company; Bergen & Dundee Railroad Company; Bergen County Railroad Company; Conesus Lake Railroad Company; Docks Connecting Railway Company; Elmira State Line Railroad Company; Erie & Black Rock Railroad Company; Erie & Wyoming Valley Railroad Company; Erie Terminal Railroad Company; Eriton Railroad Company; Hackensack & Lodi Railroad Company; Jefferson Railroad Company; Lodi Branch Railroad Company; Long Dock Railroad Company; Macoupin Railway Company; Middletown & Crawford Railroad Company; New Jersey & New York Extension Railroad Company; New York & Greenwood Lake Railway Company; New York Lake Erie & Western Coal & Railroad Company; Northern Railway Company of New Jersey; Hypano Railroad Company; Patterson, Newark & New York Railroad Company; Passaic & New York Railroad Company; Rochester & Genesee Valley Railroad Company; Susquehanna Connecting Railroad Company; Tioga Railway Company; Bessemer & Barrys Bay Railway Company; Duluth Rainy Lake & Winnepeg Railway Company; San Antonio & Aransas Pass Railway Com-

pany; Iberia, St. Mary & Eastern Railway Company; Butte Electric Railway Company; Altoona Northern Railroad Company; Abilene & Northern Railway Company; Colorado Springs & Cripple Creek District Railway Company; Denver Union Terminal Railway Company; Duluth & Superior Bridge Company; Duluth Terminal Railway Company; Stamford & North Western Railway Company; Wichita Falls & Oklahoma Railway Company; Winona Bridge Railway Company; Colorado Wyoming & Eastern Railway Company; Central Arkansas & Eastern Railway Company; Eastern Texas Railroad Company; Grays Point Terminal Railway Company; Paragould Southeastern Railway Company; Pine Bluff & Arkansas River Railway; Shreveport Bridge & Terminal Company; Stephenville North & South Texas Railway Company; Valley Terminal Railway; Calumet Western Railway Company; Cherry Tree & Dixonville Railway Company; The Connecting Terminal Railway Company; Dover & Rockaway Railroad Company; Ogden Mine Railroad Company; Ford Reading Railroad Company; Kersey Railroad Company; New London Northern Railroad Company; Paterson & Ramapo Railroad Company; Paterson & Hudson River Railroad Company; Union Railroad Company (Pittsburgh-Memphis); Enterprise Railway Company; Escambia Railway; Hiwanee & Tom Bigbee Railroad Company; Kingston Railroad Company; Mansfield Railway & Transportation Company; Shubuta & Southwestern Railroad Company; Tyronga & St. Francisco River Railway Company; Bangor Railway & Electric Company

By the commission.

[SEAL.]

GEORGE B. MCGINTY,
Secretary.

U. S. GOVERNMENT PRINTING OFFICE: 1930

8. Defendant denies the allegations made and conclusions drawn in paragraph (8) of the bill of complaint and each and every part of the same in manner and form as alleged.

9. Defendant denies the allegations made and conclusions drawn in paragraph (9) of the bill of complaint and each and every part of the same in manner and form as alleged.

10. Defendant denies the allegations made and conclusions drawn in paragraph (10) of the bill of complaint and each and every part of the same in manner and form as alleged.

11. Defendant denies the allegations made and conclusions drawn in paragraph (11) of the bill of complaint and [fols. 35 & 36] each and every part of the same in manner and form as alleged.

12. Defendant admits the allegations of paragraph (12) of the bill of complaint except that defendant alleges that by a supplemental order entered by the Commission on to wit, September 20, 1930, the effective date of the order of said Commission was postponed to December 1, 1930.

13. Defendant neither admits nor denies the allegations in paragraph (13) of the bill of complaint to the effect that certain carriers are insolvent, and in so far as they may become material upon the hearing, defendant will require strict proof thereof. Defendant denies that plaintiffs will either suffer irreparable injury or any other legal injury for the reasons set forth in said paragraph or for any other reason unless enforcement of the order of the Commission is enjoined by this Court.

Wherefore, having fully answered, defendant prays that the bill of complaint be dismissed and for such other and further order as may be appropriate.

South Manchester Railroad Company, by Robert E. Quirk, Its Solicitor. Address: Investment Building, Washington, D. C. Of Counsel: Ralph R. Bradley, 209 S. La Salle Street, Chicago, Illinois.

[fol. 37] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Equity. No. 10034

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY et al.

vs.

UNITED STATES OF AMERICA et al.

Narrative Statement of Evidence—Filed May 4, 1931

[File endorsement omitted]

[fol. 38] CAPTION

Be it remembered that on the 27th day of October, 1930, the same being one of the days of said term of said court, before the Honorable Evan A. Evans, Circuit Judge, and George A. Carpenter and Charles E. Woodward, District Judges, this cause came on for final hearing upon the pleadings heretofore filed herein.

APPEARANCES OF COUNSEL

Frank H. Towner for petitioners.
H. L. Underwood for Interstate Commerce Commission.
Elmer B. Collins for United States of America.
Robert E. Quirk for South Manchester Railroad Company.

Whereupon there was presented the petition of South Manchester Railroad Company for leave to intervene in said cause as a party defendant, together with the answer of said South Manchester Railroad Company to the petition which had been filed herein.

OFFERS IN EVIDENCE

Whereupon petitioners offered in evidence the entire [fol. 39] testimony, exhibits and other evidence introduced before the Interstate Commerce Commission in its Docket No. 17801 "Rules for Car-Hire Settlement", the same

being received in evidence and marked by the reporter as "Petitioners' Exhibit No. 1" (15).

Whereupon petitioners offered in evidence the entire record made before the Interstate Commerce Commission in its Docket No. 11367 (Benwood & Wheeling Connecting Railway Company) and the same was received in evidence and marked by the reporter as "Petitioners' Exhibit No. 2" (16).

Whereupon petitioners offered in evidence the entire record made before the Interstate Commerce Commission in its Docket No. 11614 (Hanging Rock Iron Company) and the same was received in evidence and marked by the reporter as "Petitioners' Exhibit No. 3" (17).

Whereupon petitioners offered in evidence the entire record made before the Interstate Commerce Commission in its Docket No. 11485 (Birmingham Southern Railroad Company) and the same was received in evidence and marked by the reporter as "Petitioners' Exhibit No. 4" (18).

(No Exhibit No. 5 was offered or introduced.)

Whereupon petitioners offered in evidence the entire record made before the Interstate Commerce Commission in its Docket No. 13118 (Valley & Siletz Railroad Company) and the same was received in evidence and marked by the reporter as "Petitioners' Exhibit No. 6" (19).

Whereupon petitioners offered in evidence the entire record made before the Interstate Commerce Commission in its Docket No. 15517 (Morehead & North Fork Railroad Company) and the same was received in evidence and marked by the reporter as "Petitioners' Exhibit No. 7" (20).

Whereupon petitioners offered in evidence the entire record made before the Interstate Commerce Commission [fol. 40] in its Docket No. 15697 (Greenville & Northern Railway Company) and the same was received in evidence and marked by the reporter as "Petitioners' Exhibit No. 8" (21).

Whereupon petitioners offered in evidence the entire record made before the Interstate Commerce Commission in its Docket No. 4181, in so far as that case related to the car-hire arrangements of the Genesee and Wyoming Railroad, and the same were received in evidence and marked

by the reporter as "Petitioners' Exhibits Numbered 9 and 10" (22).

Whereupon petitioners offered in evidence the entire record made before the Interstate Commerce Commission in its Docket No. 4181, in so far as that case related to the car-hire arrangements of the Tionesta Valley Railway, and the same was received in evidence and marked by the reporter as "Petitioners' Exhibit No. 11" (23).

Whereupon petitioners offered in evidence the complaint and answers filed with the Commission in its Docket No. 16972 (Big Sandy & Kentucky River Railway Company) and the same was received in evidence and marked by the reporter as "Petitioners' Exhibit No. 12" (24). (The evidence in this case is included in Petitioners' Exhibit No. 1).

Whereupon petitioners offered in evidence the entire record made before the Interstate Commerce Commission in its Docket No. 14433 (Lime Rock Railroad Company) and the same was received in evidence and marked by the reporter as "Petitioners' Exhibit No. 13" (25).

Whereupon petitioners offered in evidence the entire record made before the Interstate Commerce Commission in its Docket No. 15420 (Virginia Blue Ridge Railway) and the same was received in evidence and marked by the reporter as "Petitioners' Exhibit No. 14" (26).

Whereupon petitioners offered in evidence the entire [fol. 41] record made before the Interstate Commerce Commission in its Docket No. 15771 (Greenbrier & Eastern Railroad Company) and in its Docket No. 15771-Sub. No. 1 (Sewell Valley Railroad Company) and the same was received in evidence and marked by the reporter as "Petitioners' Exhibit No. 15" (27).

Whereupon petitioners offered in evidence the entire record made before the Interstate Commerce Commission in its Docket No. 16420, (South Manchester Railroad Company) and the same was received in evidence and marked by the reporter as "Petitioners' Exhibit No. 18" (30).

Whereupon petitioners offered in evidence the entire record made before the Interstate Commerce Commission in its Docket No. 16473 (Kosciusko & South Eastern Railroad Company) and the same was received in evidence and marked by the reporter as "Petitioners' Exhibit No. 19" (31).

Whereupon petitioners offered in evidence the entire record made before the Interstate Commerce Commission in its Docket No. 13757 (Jefferson & Northwestern Railway Company) and the same was received in evidence and marked by the reporter as "Petitioners' Exhibit No. 20" (32).

Whereupon petitioners offered in evidence the complaint and answer filed with the Interstate Commerce Commission in its Docket No. 16546 (Skaneateles Railroad Company) and the same was received in evidence and marked by the reporter as "Petitioners' Exhibit No. 21" (33). (All the evidence in this case is included in petitioners' Exhibit No. 1.)

Whereupon petitioners offered in evidence the entire record made before the Interstate Commerce Commission in its Docket No. 16597 (Wabash, Chester & Western Railroad Company) and the same was received in evidence and marked by the reporter as "Petitioners' Exhibit No. 22" (34).

Whereupon petitioners offered in evidence the entire [fol. 42] record made before the Interstate Commerce Commission in its Dockets No. 4181 and I. & S. No. 414, in so far as that case related to the car-hire arrangements of the Northampton and Bath Railroad, and the same was received in evidence and marked by the reporter as "Petitioners' Exhibit No. 23" (35).

Whereupon petitioners offered in evidence the entire record made before the Interstate Commerce Commission in its Dockets No. 4181 and I. & S. No. 414, in so far as that case related to the car-hire arrangements of the Owasco River Railway Company, and the same was received in evidence and marked by the reporter as "Petitioners' Exhibit No. 24" (36).

Whereupon petitioners offered in evidence the entire record made before the Interstate Commerce Commission in its Dockets No. 4181 and I. & S. No. 414, in so far as that case related to the car-hire arrangements of the Pullman Railroad, and the same was received in evidence and marked by the reporter as "Petitioners' Exhibit No. 25" (37).

Whereupon petitioners offered in evidence the entire record made before the Interstate Commerce Commission in its Dockets No. 4181 and I. & S. No. 414, in so far as that

case related to the car-hire arrangements of the Chicago Short Line Railway Company, Lake Erie & Ft. Wayne Railroad Company, Manufacturers Junction Railway Company, Lakeside & Marblehead Railroad Company, Valley Railroad, and Bay Terminal Railroad, as fixed by the Commission in its report at 63 I. C. C. 122, and the same was received in evidence and marked by the reporter as "Petitioners' Exhibit No. 26" (38).

Whereupon petitioners offered in evidence the entire record made before the Interstate Commerce Commission in its Dockets No. 4181 and I. & S. No. 414, in so far as that case related to the car-hire arrangements of the Illinois Northern Railway, as fixed in the report of the Commission at 61 I. C. C. 629, and the same was received in evi-
[fol. 43] dence and marked by the reporter as "Petitioners' Exhibit No. 27" (39).

Whereupon petitioners offered in evidence the entire record made before the Interstate Commerce Commission in its Dockets 4181 and I. & S. No. 414, in so far as that case related to the car-hire arrangements of the Pullman Railroad, Chicago Short Line Railway Company, Illinois Northern Railway, Manufacturers Junction Railway Company, Bay Terminal Railroad, Lakeside & Marblehead Railroad Company and Valley Railroad, as fixed in the report of the Commission at 78 I. C. C. 475, and the same was received in evidence and marked by the reporter as "Petitioners' Exhibit No. 28" (40).

(The testimony and other evidence contained in Petitioners' Exhibits No. 1 and No. 18 has been reduced to narrative form and is incorporated in this statement of evidence under the heading "Narrative Statement of Evidence before the Interstate Commerce Commission", which immediately follows. The exhibits deemed material to the issues before the court, and contained in Exhibit No. 1 are here set forth in full and in substance. In addition, all exhibits introduced before the Interstate Commerce Commission, and contained in Exhibit No. 1 and Exhibit No. 18, together with all other exhibits introduced before the court, have been certified and transmitted separately as original exhibits to the Clerk of the Supreme Court.)

[fol. 44]

Narrative Statement of Evidence Before the Interstate Commerce Commission

BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 17801

Rules for Car-hire Settlement

Before W. P. Bartel, Director, Bureau of Service, and C. A. Rice, Statistical Analyst, Bureau of Service

Washington, D. C., March 8, 1927.

APPEARANCES OF COUNSEL

F. H. Towner, for American Railway Association and Trunk Line carriers.

W. W. Meyer, for New York, New Haven & Hartford Railroad Company.

C. J. Rixey and H. L. Walker, for Southern Railway System.

W. E. Davis and E. H. Holden, for Kansas City Southern Railway Company.

H. G. Fitzpatrick, for Chesapeake & Ohio Railway.

J. Raymond Barse, for Chicago General Manager Association Lines.

Earle C. Calhoun, for New York Central Railroad and New York Central Lines.

Ben B. Cain and Moultrie Hitt, for American Short Line Railroad Associaiton.

C. E. Cooney, for Skaneateles Railroad Company.

Moultrie Hitt and Clarence A. Miller for Valley & Siletz Railroad Company, and Tionesta Valley Railway Company.

William M. B. Lord, for York Utilities Company.

John H. Burchmore, for Manufacturers Junction Railway Company.

Charles H. Belsterling, for Birmingham Southern Railroad Company, Benwood & Wheeling Connecting Railway Company, and McKeesport Connecting Railway Company.

T. D. Geoghegan, for Bellefonte Central Railroad.

George T. Bell, for Klickitat Log & Lumber Company.

Robert E. Quirk, for South Manchester Railroad, Greenville & Northern Railroad, Moorehead & North Fork Railroad, Virginia Blue Ridge Railway, Sewell Valley Railroad, Big Sandy & Kentucky River Railroad and Kosciusko & Southeastern Railroad.

Allen McCarty, for Northampton & Bath Railroad and Hannibal Connecting Railroad.

[fol. 45] George H. Parker, for Lime Rock Railroad Company.

Harleigh H. Hartman, for Pullman Railroad.

W. E. Smith, for Coudersport & Port Allegany Railroad.

A. A. Adams and M. P. Smith, for Mississippi Southern Railroad.

Stephen D. Rice, for Arcade & Attica Railroad.

Ewing H. Scott and E. E. Williamson, for Moshassuck Valley Railroad.

Fred Esch, for Sibly, Lake Bisteneau & Southern Railroad, Mississippi Eastern Railway Company, and Longview, Portland & Northern Railway.

E. R. Effler, for Bay Terminal Railroad Company.

Clifford H. Browder, for Owasco River Railway, Illinois Northern Railway, and Deering Southwestern Railway.

Proceedings

Director Bartel stated that the Commission had set for hearing at this time and place Docket 17801, in the matter of car-hire settlement between railroads, and has reopened and consolidated with such investigation and set for hearing at the same time and place the cases referred to in that order as well as in the supplemental order of June 7, 1926 (Tr. 8).

Statement of Mr. Hitt

Mr. Hitt then made the following statement of the position of the American Short Line Railroad Association:

(1) He granted that the car owner, as a car owner, is entitled to become fairly compensated by the car user; that the American Short Line Railroad Association is not primarily interested in the method of paying the compensation, but that, while the car owner should get compensation,

that is a question distinct from that of what proportions of that compensation should be contributed by the respective car users in joint service (Tr. 12).

(2) That while the per diem system is a system of settle-
[fol. 46] ment between car owners on the one hand and car users on the other, it is also a system for the division of the cost of a vehicle used in joint traffic between two or more car users; that a time system of calculating and making settlement may be substantially fair as between car owners as a class, but may be substantially unfair and unjust as a means of apportioning the cost as between car users; that the principle under which a switching line receives a reclaim of per diem (Tr. 13) is the same as that under which a short line rendering terminal service should receive free time.

(3) That as a general rule the Short Line Association agrees that the short line as a car user should pay the equivalent of interest, depreciation, taxes and other car ownership costs that it would have to pay if it owned its just share of the cars used in interline traffic, and asks no concession or favor at the expense of car owners (Tr. 14); that the question for determination is what proportion of the car cost should be borne by the one car user as compared with another car user where both participate in the joint traffic.

Mr. Hitt then stated the relief advocated by the American Short Line Railroad Association is:

"First. That the distinction in the Per Diem System as between (1) settlements with car owners and (2) settlements between car users be discerned and declared as between (1) Car Hire as a matter of settlements with car owners as car owners, and (2) Car Hire as a matter of apportioning the cost of car hire or car ownership between car users as car users.

"Second. That the present discrimination against non-subscriber car owners in respect to the method and amount of compensation from car users be abolished. Whatever the basis of proper compensation to the car owner, the non-subscriber car owner is entitled to it just as fully as the subscriber car owner. This distinction will vanish if the

Commission prescribes the rules. We insist upon the same result whoever prescribes the rules.

"Third. That the discrimination in the rules as between subscribers and non-subscriber car users merely because a line is a non-subscriber with respect to the Switching Reclaim, be abolished. If the Per Diem and Car Service Rules be hereafter prescribed by the Interstate Commerce Commission, the arbitrary distinction between subscribers and non-subscriber car users will be automatically wiped out. [fol. 47] We do not insist, however, that the Commission do this if the same result can be brought about by the carriers themselves.

"Fourth. That the short lines be given representation on the Committees which make the Per Diem and Car Service Rules and their interpretations.

"Fifth. That the Per Diem Rules provide that there may be special reclaim by short lines analogous to the existing Rule 5 for switching reclaim, and that, within appropriate limits, the proper amount of such special reclaim be left to local adjustment by the car users directly interested; and that in the event of an inability to agree on the proper measure of such special reclaim, if any, in any instance, the disagreement be referred to arbitration, with or without the participation and good offices of a representative of the Interstate Commerce Commission.

"Sixth. That where the cost and burden to the little short line especially the stub-end feeders with only one connection, for accounting direct to several hundred car owners all over the United States and in Canada and Mexico is disproportionate to its light traffic, settlements may be made between the short line and its immediate connection acting for scattered car owners."

[fol. 48] Arthur Hale, called as a witness by the American Short Line Railroad Company and being duly sworn, testified as follows (Tr. 17):

"My name is Arthur Hale. I live here and represent certain railroads and industries before the Commission and other Government departments. I have been connected with

[fols. 28-30] of any legal right of the plaintiffs in the above entitled cause.

Wherefore petitioner prays that leave be granted to it to intervene in and be treated as a party defendant in the above entitled cause, and to file an answer or other pleading herein, and to have such other and further relief in the premises as equity may require and as to your Honors may seem appropriate.

South Manchester Railroad Company, by Robert E. Quirk, Its Solicitor. Address: Investment Building, Washington, D. C. Of Counsel: Ralph R. Bradley, 209 S. LaSalle Street, Chicago, Illinois.

Duly sworn to by Charles H. Cheney. Jurat omitted in printing.

[fols. 31 & 32] In United States District Court

[Title omitted]

Order Allowing Petition of Intervention of South Manchester Railroad Company—Oct. 27, 1930.

On application duly made in Court for leave of the South Manchester Railroad Company to intervene in the above entitled proceedings, it is ordered

That leave be and the same is hereby granted to the South Manchester Railroad Company to file its petition of intervention and answer in support of the validity of the order of the Interstate Commerce Commission and to be made parties to the cause.

By the Court:

Evan A. Evans, Circuit Judge. Carpenter, United States District Judge. Charles E. Woodward, United States District Judge.

[fol. 33] In United States District Court

[Title omitted]

Answer of South Manchester Railroad Company—Filed Oct. 27, 1930

The South Manchester Railroad Company, intervening defendant in the above entitled suit, now and at all times

hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiffs' bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

1. Defendant admits that plaintiffs are corporations engaged as common carriers by railroad in interstate commerce subject to the Interstate Commerce Act and that some of them operate lines of railroad in the Northern District of Illinois, Eastern Division. Defendant denies the allegation that the order of the Commission complained of does not relate to transportation or to a matter complained of in a petition before the Commission; and alleges that the order complained of does relate to transportation as that term is defined in Section 1, paragraph (3) of the Interstate Commerce Act and that the order relates to matters that were complained of in petitions before the Commission.

[fol. 34] 2. Defendant admits that petitioners are members of the American Railway Association. Defendant admits that the provisions of paragraph (10) and of paragraph (11) of Section 1 of the Interstate Commerce Act are as alleged in the bill of complaint. Defendant disclaims information sufficient to form a belief as to whether the other allegations in paragraph (2) of the bill of complaint are as alleged, and in so far as they may become material upon the hearing, defendant will require proof thereof.

3. Defendant admits the allegations of paragraph (3) of the bill of complaint.

4. Defendant admits the allegations of paragraph (4) of the bill of complaint.

5. Defendant admits the allegations of paragraph (5) of the bill of complaint.

6. Defendant admits the allegations of paragraph (6) of the bill of complaint.

7. Defendant denies the allegations made and conclusions drawn in paragraph (7) of the bill of complaint and each and every part of the same in manner and form as alleged.

29). All refunds of per diem were arranged for by what we called and still call "reclaims." The per diem was to be paid first to the owner and was then to be given back in case it should not have been paid on account of embargo or for some other reason. We had trouble with the reclaims when applied to the switching roads and we had more trouble with Rule 5, the switching reclaim rule than any other, both in its adoption and in its administration afterward. It was agreed that a switching road should first pay the per diem to the owner without question but subject to adjustment, but we knew that some of them would go broke if they did not get it back (Tr. 30). We knew that the [fol. 51] switching roads could not pay full per diem without a number of them going broke. We had explained to us very forcibly the situation of a number of trunk lines whose switching was very important. There is probably more switching done by trunk lines for other roads than there is by the so-called belt and switching roads. They felt that they ought to be helped out if they were going to pay per diem. Some of the trunk lines were willing to pay per diem without reclaim; especially the eastern ones where switching was not so important were willing to "let one hand wash the other. What we lose in one switching district where we do switching, we will gain in another where other people do the switching." Others who claimed to do more switching for others than was done for them insisted upon having the same consideration as switching lines, and I do not doubt that a number of the larger trunk lines would have stayed out if Rule 5 had not been made (Tr. 31). The switching roads paid no mileage, no matter how long they were; the trunk lines did not pay mileage on the cars they switched. That was one of the beauties of the mileage system. This was because the charges collected for switching were not high enough to enable the switching road to add the car hire to its other costs. The members of my committee consulted their traffic men to see whether or not switching rates could be increased to cover per diem, and we were all told that it was not practicable (Tr. 32). I was told by an official of one of the large railroads that all the switching rates in the country could not be changed to make the per diem system work. I then produced Rule 5, the switching reclaim rule, and this official said he would vote for it (Tr. 33). With that backing and the backing of

other important people we finally put the rule through and agreed tentatively on per diem reclaims all over the coun-
[fol. 52] try. We did increase the switching rates enough to make the thing go. We did not increase the rate to the shipper but required the trunk line to absorb the switching reclaim as well as the switching charge (Tr. 34). Reclaim is paid by the line for whom the switching is done, whether or not it is the owner of the car and was paid, even though the switching charges may have been added to the line haul rate. Where the switching road did not participate in the through rate, the reclaim might be paid. Rule 5 is not a mandatory rule, as we felt that reclaim arrangements must be the basis of local agreement (Tr. 35). It was made a matter of agreement between lines participating in the joint business. The original rule provided for the reclaim of an arbitrary amount on each car in switching service to be reclaimed by the switching line from the road for which the service was performed, the amount to be based upon the average number of days required, to be determined by the roads directly interested for each local territory. That rule stood for eleven years. It was amended in 1913 and again in 1923 (Tr. 36). In 1913 the rule was changed limiting the average number of days for which reclaim was allowed to 5, the actual number to be determined by an examination of the records of each switching line. This rule also prohibited reclaim on intermediate switching movement and reclaim to a nonsubscriber (Tr. 38). This change was made to help in arriving at the amount of the switching reclaims and the time for which reclaim should be allowed (Tr. 39). We had hoped that eventually reclaim would be taken up in the switching rate so that the operating men would not have to bother it since we looked upon it as a traffic function. We tried, however, to handle it as well as we could. We did get rid of the switching reclaim in a number of places, especially in
[fol. 53] the East, and when we did get a proper addition to the switching rate, reclaim was discontinued for that community (Tr. 40). We later found that some switching roads needed more time for reclaim than other roads, so we changed the rule to allow a different reclaim for each road. We really hoped that that would make it easier to add the reclaim to the switching rate. We also limited the average number of days for which reclaim was allowed to 5 in order

to prevent excessive reclaims, which we found were being demanded in certain places. We also required an annual examination of the records of each individual switching line because we felt that was necessary (Tr. 41). In cases such as the eastern roads mentioned where no reclaim was allowed because of an increase in switching rates and the switching rate is not absorbed, that would mean an increase to the shipper, to whom is thus passed part of the car hire through such increase in the switching rates. In the case of the Long Island Railroad we found that it required more than the 4 days allowed for switching, so we added that amount to the switching rate (Tr. 42). The switching charge was increased by the amount of the per diem and the reclaim discontinued, which meant that the consignee paid the per diem where there was no absorption of the charges (Tr. 43). In most cases, however, the switching charge was absorbed. In cases where the higher switching charge was not absorbed, the shipper paid the per diem, and in cases where it was absorbed the delivering trunk line paid the per diem, so that in the case of charges that were absorbed, the same conclusion was reached as if reclaim had been allowed so far as the shipper or receiver was concerned and that is also true as to the delivering trunk lines (Tr. 44). When the per diem system was under consideration and adopted, very little consideration was given to the situation of short lines, that is the lines with short or [fol. 54] light traffic and perhaps with only one connection or maybe two or three connections, lines less than 100 miles in length. Before the rules were adopted a questionnaire was sent out to all members of the American Railway Association, which then included 51 roads that were less than 100 miles in length and not belt lines and were not controlled by short lines and that could properly be called independent short lines. These 51 roads were the only ones consulted. We did not consult the short lines which were not members of the Association. Only 25% of the 51 replied. Seven favored per diem and 6 were against it (Tr. 45). Apparently the short lines that we consulted did not consider the matter of importance or they would have answered. And we went ahead meeting the conditions that we had to meet, without reaching out for other things that might possibly embarrass us, which we left to the future. There was quite a little discussion with respect

to lines with terminal service but a short line haul. The Pere Marquette and the New Haven felt that they were short haul roads and they put up the plea that they were being unjustly handled; that they should have the same consideration that the switching roads would have; that they did not get as sympathetic replies from us as they might have, but they were the railroads that had succeeded in tabling the per diem plans year after year, and we were after them; we were going to get the per diem plan (R. 46). They endeavored to delay the adoption of the per diem code. At a meeting of the American Railway Association in April 1902, I made the statement that the Committee of the Association having the matter in charge wished to call attention to the fact (R. 47) that it was open to railroads in other localities to give similar relief to roads situated like switching railroads, and that therefore a broad definition of switching service was desirable. The question was [fol. 55] also raised whether Reclaim Rule No. 5 was to be confined to absolute switching lines or if it could take in a line which had a short haul besides switching. I stated that the Committee tried very hard to find a line between a railroad that had a short haul in addition to terminal work and a railroad that had a long haul in addition to terminal work, that the Committee had therefore in this rule simply covered the straight switching lines, but there is nothing in the rules to prevent the connection of a railroad with a short average haul from getting together with the railroad and saying: 'Mr. Short Haul Road, we understand that this is (R. 48) going to be hard upon you and we will treat you as a switching line under this rule'; that there was nothing to prevent that; that under this rule in a case of that kind everybody will have to be heard as to what the allowance is to be or what it is not to be. The matter is left to the roads in each locality. The Committee felt that it was not able to make a rule to cover switching roads and still less able to make a rule to cover short haul roads, which would meet every diverse case in the country.

By Director Bartel:

Q. The sum and substance, as I understand it, is that the committee undertook to treat some short railroads in the same category they would switching roads and give them two or three free days under Rule 5?

A. Mr. Director, I do not want to play with words, but Rule 5 does not give free time.

Q. That is true.

A. All right. The committee said through its chairman, although not by formal action, that the rules would not prevent roads in one locality getting together and allowing a switching reclaim to a short haul road.

Q. Even though that short haul road performed no switching service?

(No response.)

(Tr. 49.)

I would say that this was still open under the rule. The rule has been changed but not in that particular. My point is not that the rule provided for switching reclaim to short haul roads but that it did not prohibit it, and I do not say [fol. 56] that the rules prohibit it now. The rule is the same now as it was at the time of that discussion in so far as it undertakes to describe the character of service for which a reclaim will be allowed. It took about six months to bring about the adoption of the per diem rules from the time the matter was taken off the table at that meeting (Tr. 50). The adoption was announced in May, 1902, and the rules were taken off the table in October, 1901. It was done quickly because there was a car shortage, so quickly that it surprised me (Tr. 51). It was expected that it would take a long time. In my case the moving cause for supporting the rules was that I wanted to show that my railroad was honest, and under the mileage system that could not be done (Tr. 52). The position of the short haul lines in performing switching service, that they were entitled to the same consideration in the matter of reclaim as a switching line, was based upon their contention that their divisions on through traffic were not sufficient to enable them to pay car hire. One road argued that the American Railroad Association, in introducing the per diem system was interfering with the Traffic Department and that, although an advisory institution, it was getting away off its original basis by proposing a thing of this kind which would result in the transfer of large amounts of money from (R. 53) one road to another. That objection could have been obviated by dealing with divisions, but we did not venture to talk about divisions for the short lines. I hate to admit that the per diem system works a hardship or an injustice

in any event, but if a railroad, prior to the introduction of per diem, was making only a fair return (Tr. 54) and imposition of the per diem reduced that fair return materially, I believe that should be equalized in some way. It was necessary to equalize it as to switching roads by Per Diem Rule 5, in order to make the system acceptable. The larger roads were advocates of per diem since they thought that it [fol. 57] would even up on their lines where they lost in one place, they would gain in another, but the smaller the road the less likely that is to help them; so that the need for some readjustment is probably more necessary in the case of a small road. The averaging principle on smaller roads does not equalize the inequalities. When I say 'small road' I mean a road short in mileage (Tr. 55), but that would not be exactly correct if a road short in mileage had enough cars to earn the per diem that it paid for using somebody else's cars. That case is not the usual case. If a short road has more than its share of coal cars, per diem is to its advantage. If a short line road with a very large car equipment were making a fair return prior to the introduction of per diem, it seems to me that it might make more than a fair return after the introduction of the per diem system. I was not taking into consideration the number of cars when I made that remark about averaging up (R. 56). What I was thinking was, for example, a large road, such as the B. & O., does a great deal of switching for other railroads and other railroads do switching for it. Because of the large number of cities in which this is done, it comes out about even, whether it allows reclaim or gets it. A short line with only one connection could not even up because it would either receive a switching reclaim or pay a reclaim. That is what I meant when I spoke of a large or a small line. If a per diem rate was only 10 cents, a road having lots of cars would be worse off than if it had no cars, but that is another aspect which I was not considering, although it is a very important aspect. My statement is based upon the assumption that the road had a reasonable return before the per diem was imposed. I have not got quite so far as meaning that the present per diem charge is a reasonable return (Tr. 58). If per diem exactly offset the cost of car owner- [fol. 58] ship, there would be no gain in owning a great number of cars. They would get back exactly what they paid for the use of the cars.

"Director Bartel: The question of proper car settlement is in issue, and I presume that takes into consideration the amount.

"Mr. Burchmore: That question would be at issue then about whether that rate is the proper rate.

"Director Bartel: I would think so" (Tr. 59). As a result of some study as to what the mileage rate produced per car day, prior to the adoption of the per diem system, we came to the conclusion that the average mileage of a foreign car at that time was about 18 miles a day giving a return of 12 cents a day. The first per diem rate adopted was 20 cents a day. Those roads which owned cars immediately sought by the addition of the per diem system to gain additional income for the use of their cars by other roads, by the change from the existing return of 12 cents to 20 cents (Tr. 60).

The Witness: The so-called "midnight rule" provides that periods are to be calculated by subtracting one date from another, and under it, when a road holds a car at midnight, it pays per diem whether it holds it for one minute thereafter or for 24 hours thereafter (Tr. 61). With interchanges at a number of points, this is more likely to even up than when there is an interchange at only one point. Everybody tries to make his interchange before midnight. A large line distributing cars to stub-end feeder connections may get them to one connection at 11 o'clock P. M. and to another at 1 o'clock A. M. (Tr. 62).

The carrier that receives them at 11 o'clock has to pay per diem and the other one does not. In the case of the Cumberland Valley Railroad, it is able to handle much of its traffic within 24 hours and not pay any per diem (Tr. 63). As an intermediate line it participates in joint reve- [fol. 59] nue and yet might escape without payment of per diem. That condition would obtain no matter when the per diem day started. A short line is generally not in a position to average up in this respect (Tr. 64).

This may be to the advantage of one short line and to the disadvantage of another. In the case of demurrage which starts at 7 A. M., if a car is not placed by that time for the shipper he gains an extra day but the carrier that has the car is charged per diem (Tr. 65). The so-called "midnight rule" is not peculiar to per diem but exists in demurrage. I do not admit that the midnight rule is a dis-

advantage. I think it has proved to be an advantage, although, of course, it is a disadvantage to certain lines. I have heard of cases where one railroad forebore that advantage over another line (Tr. 66). I understand that such arrangements were permitted under the original per diem rules. I have never heard of an arrangement that interchange between roads would be counted as taking place at the time a short line takes the car from an interchange track, as that would allow the short line to leave the car for a week before it took it away. I have heard of cases where interchanges performed about midnight were regarded as being made on the following day (Tr. 67). I have also heard of arrangements where the trunk line held cars on order and counted them as delivered to the short line at the time they were delivered after order (Tr. 68).

(Mr. Hitt then stated that he was trying to develop a picture of the per diem rules as originally entered into under which latitude was allowed for taking care of local situations and that this is still done and is necessary.) (Tr. 69).

The Witness: I am not as familiar with the phrase "non-subscriber" as it was introduced rather late in the proceedings and does not appear in the original per diem code, [fol. 60] We hoped that everybody would come in as members of the agreement. Original Rule 6 refers to roads which do not pay per diem, but it was later changed to "non-subscriber." I am now sorry that we introduced the distinction between subscribers and non-subscribers. All carriers should come into the agreement (Tr. 70). We felt that the per diem rules originally should have some elasticity as it was impossible to cover all local conditions, and we, therefore, left as much freedom as we could (Tr. 72). One case cited against the practicability of the per diem rules was the necessity of accumulatnig empties in advance of a large movement of a staple, such as grain, and we made a special rule to take care of that by a reclaim. One provision was that if a railroad held the cars of another with its consent for grain loading, those cars should be subject to special reclaim. I call that "elasticity." That was an arrangement with the owner of the car which was consistent with the principle that the owner should get paid for the car and that the special reclaim should be with

his consent (Tr. 73). I cannot help thinking that it is desirable to have latitude in the rules for local agreements. I have no doubt that in the last ten years it has been necessary to stiffen up the rules, but, as I look back, I think a certain amount of elasticity should be retained as I believe is retained in Rule 5. Switching reclaim was gotten rid of in certain cities in the East, I understand (Tr. 74), but it still persists in the rest of the country. We thought originally that it was a cumbersome rule, that would cure itself. The idea of the agents of two railroads first making a set of switching bills for a certain set of cars and then, when they got through sitting down and making a set of reclaim bills for identically the same cars, seemed to us so cumbersome that it could not persist. The reason given to me why [Tr. 61] the per diem charge and the reclaim charge should be kept separate was because of the variation of per diem. I think the rule has persisted largely because the operating people cannot get rid of it (Tr. 75). The local situations are such that the need of reclaim still exists. If switching rates and divisions had not been changed, it would be unfair to deprive the switching roads of the switching rates. The distinction between switching movement under which reclaim is allowed and line haul movement under which it is not allowed is that the switching movement must take place in a recognized switching district, for a definite sum per ton or per car, as shown in switching rules. If a car is moved the same distance, for the same money, on a proportion of the through rate, it is not subject to reclaim. That is an arbitrary distinction, but we had to make some distinction and that seemed convenient (Tr. 76). Besides the switching lines had power to force it and we deferred to their views; we placated the powerful people. It was a compromise. When I say they forced it, I mean that we knew that our rules would not be adopted by the necessary majority unless we made some allowance for somebody. We figured out that if we made an allowance for the switching lines that that would be enough to give us our necessary majority. The switching lines did not object to reclaim on switching service with no reclaim on line haul traffic. That objection came from roads like the Pere Marquette and the New Haven which did little switching but had lots of short haul movement (Tr. 77). They objected to the rules. Nobody objected to reclaim but everybody agreed that it

was a pretty good thing. Where a switching road receives a division of a joint rate it receives no reclaim. The switching roads forced a concession and by switching lines I do not mean so much the belt lines as the large lines which do switching. They were the important roads. We had to [fol. 62] make some concession and allowing reclaim to switching lines was the smallest concession we could make which would satisfy them (Tr. 78). My impression is that more terminal switching is performed by trunk lines than by belt roads. If a road handles traffic on a switching charge, it is allowed a reclaim, and if it gets a division out of a rate and this division is precisely equivalent to the switching charge, it gets no reclaim. If a trunk line wanted to give a road a reclaim, they would simply say "You cannot have a division;" if they wanted to avoid a reclaim they could put in the same division and pay no reclaim. I have often said in times of car shortage that the solution of this problem by short lines lies in the acquisition of sufficient cars to earn enough money to pay their per diem bills (Tr. 79). I last said that in 1907, under the instructions of the American Railway Association when there was as bad a car shortage as I have ever seen. If we were back in the same situation, I would advocate the same thing. I see no reason now why there should ever be a car shortage, but it is true that if any road will buy enough cars it can even up on per. diem. Whether or not that is a good thing to do nowadays depends on circumstances (Tr. 80). If short lines now bought enough cars to even up their per diem, it would unnecessarily add to the equipment of the country. Moreover, the average short line does not have the money to buy cars so far as I have been able to judge. Another objection is that having enough cars to do business in the busy season requires storage space when they are not being used (Tr. 81). Many short lines do not have storage space; that involves another necessary expense. If they now bought so many cars the rules requiring them to be kept in good shape would have to be changed, because I find that it is difficult and expensive to get a master mechanic who can keep equipment in shape since steel cars [fol. 63] have come in and I do not think there are enough master mechanics to give every short line the proper advice to keep a considerable equipment in condition. If short

railroads since 1882, as shop apprentice, car clerk, car accountant, superintendent of telegraph, Assistant General Manager and General Superintendent of Transportation. I entered the service of the American Railway Association in 1909 as General Agent (Tr. 18). I resigned from that Association in 1916. When I first entered railroad service, the so-called 'mileage system' was in effect. The mixed per diem plan was introduced in 1888. In 1902, I was Chairman of the Committee on Car Service of the American Railway Association, the Committee which introduced the Code of Per Diem Rules, which, with amendments, is still in effect. I have been familiar with, and a student of, the per diem question for many years. (Tr. 19.) The payment of mileage for the use of cars originated in the late 60's. In 1867, rates of 1½ cents and 2 cents per loaded mile were paid more or less currently. By the time I had personal touch with the matter, the mileage rate was three-quarters of a cent and one cent on loaded and empty mileage, the one cent applying on refrigeration and certain other special cars and the three-quarters of a cent on all other cars. (Tr. 21.) There was no national railroad organization and the mileage payments were an unsatisfactory custom. An A. R. A. committee reported in 1888 that mileage was the most objectionable plan that could be designed, and this was the general view. (The English plan which is a combination of mileage and demurrage rather than mileage and per diem) was tried in the early 70's by the Maine Central, and in 1876 [fol. 49] the Union Pacific and the C. B. & Q. had a 50 cent per diem arrangement between themselves for a couple of years but were unable to get others to come in. (Tr. 21.) The question of payment for cars became more important after 1886 when the Southern lines were made standard gauge and there was free interchange all through the country. (Tr. 22.) In 1887, the Association of Car Accountants made the first per diem code, which was a mixture of mileage reduced to ½ cent per mile and per diem at the rate of 15 cents a day. This was approved by the trunk lines. It was tried for several months beginning in January, 1888. (Tr. 23.) There were great difficulties with this mixed scheme, because the expense of determining and settling the per diem was an absolute addition to the expense of the mileage system; the mileage system went on and the mixed per diem system was laid upon it. Some of the offices secured

more clerks but others were expected to go ahead with the old force and this made the new plan unpopular. A further difficulty was that a road would infallibly pay more money for the use of cars, unless its cars went 60 miles per day, which was seldom the case. When the first month was through everybody found they were going to pay out more money, whether they got in more or not, and that resulted in the speedy defection of lines which found they were going to pay more money. Within six months there were only two or three lines left in the agreement. It was a flat failure. (Tr. 24.) In 1888, the matter was taken up by the General Time Convention, the predecessor of the American Railway Association. From then to 1898 various committees considered and reported to the American Railway Association different per diem plans. In the meantime the mileage system of payments continued with reduction in the basic rates paid per mile. (Tr. 25.) The original plan of the car accountants provided that per diem on cars switched at terminals for loading and unloading should be paid by the road for which the switching was done. [fol. 50] When the trunk lines got hold of it they changed the wording so that the per diem was to be paid by the switching line. Consequently lines which did a large amount of switching would not come in at all to the plan because the per diem would increase their expenses very much. This switching question was not decided until 1902. In 1895 a 15-cent straight per diem plan failed on a vote (Tr. 26). From 1888 to 1899 a succession of plans were proposed but not adopted. In 1901, I believed and I think almost all transportation men believed that per diem was the only answer to the question (Tr. 27). In 1902, a committee of the American Railway Association was formed to formulate a per diem code, and I was made Chairman of this committee (Tr. 28). Such a code was formed and adopted July 3, 1902 on the principle that per diem should be paid to the car owner for every day the car was away. That was the only principle because that was what we wanted, and all the other rules were calculated to make it practicable. The accounting rules, including arrangements for interchange and junction reports, had already been made and it was comparatively simple to provide the mechanical features by which a road should have per diem back in case of a wrecked car or things of that kind (Tr.

excepting from it cars loaded with cotton, which were very badly delayed in New England at that time. It sent out a circular saying that unless this reservation was accepted it would withdraw its cotton tariff (Tr. 93). The Trunk Line Association met and notified the New Haven that their cotton tariffs were withdrawn. This was in July, 1902. The New Haven then withdrew its reservation and when the cotton tariffs were restored everything went along smoothly. By "fighting rule" I mean a rule held as a club over the other fellow to get him in line (Tr. 94). You understand that, of course, we are only compelling him to do what was right. Now the situation is different, there is [fol. 66] not any large game to go after and it seems to me rather deplorable to shoot at the very little fellows with this pretty large shot of paying mileage instead of per diem, but, of course, it is necessary. The original policy of letting everybody into the per diem agreement was a mistake because there was a cloud over a lot of roads until the Tap Line Decision. Besides that, everybody who came in ought to subscribe to the mechanical rules of interchange and adopt the explosive rules. We provided that they should become members or associate members of the American Railway Association, which gave them a voice on the floor and the benefit of the questionnaire (Tr. 95). I do not know whether the club is now being used effectively, I suppose it is. Associate members of the Association have a voice on the floor and can answer the questionnaire, put out before a rule was changed. In that way they have a voice, not the same voice, perhaps which a large road had which could vote. The short lines cannot vote. We felt that was necessary. Now I gather from the rule adopted since I left the Association that they found that some stringent measures were necessary. Membership in the American Railway Association was not a condition precedent to subscribing to the rules at first. That was put in afterwards (Tr. 96). I am quite sure that under the mileage basis the average car would not earn anywhere near $1 a day. When the mixed system was made in 1888, the mileage was made half a cent a mile because it was figured that repairs would cost that much and the 1½ covered interest and depreciation. That was logical and if it had not been for inherent disadvantages in the mileage system (Tr. 97), it would have been better than straight per diem.

Under per diem the road on which the miles per day are small is paying the same for service which costs less, and the short line is under a disadvantage. The first principle [fol. 67] under per diem is that the car owner should be paid directly for his car by the line on whose road the car has been for the days that it was on that line. It would be practicable for short lines—take a sub-end feeder of say less than 25 miles—having only one connection to make settlement on all cars with its immediate connection, rather than with different owners, and I believe it is done (Tr. 98). It is quite a job to settle per diem on even a small road at the end of the month, because of the large number of car owners. In a good many cases settlements with immediate connections would be desirable for the small line or light traffic. I think the Railroad Administration handled some of the short roads that way. I was in charge of a committee which handled demurrage affairs for the American Railway Association (Tr. 99). I conducted negotiations with the Interstate Commerce Commission for some years in regard to interpreting the rules. They provided that no demurrage should be assessed against coal mines on the theory that in periods of car shortage the coal car supply is best regulated by car distribution rules rather than by demurrage, and in periods of car surplusage, it was assumed that it did not make any difference (Tr. 100). That exemption applied when cars were held on line and is still the rule. It is being enforced on the roads of which I have immediate knowledge. If they have room on their siding coal mines can hold empties indefinitely without paying demurrage. The rule does not vary with the length of track. I know of no limit to the track. Under the rule the carrier would receive no demurrage or per diem, although it must pay per diem to the car owner (Tr. 101). The rule applies to coal mines on short line railroads. If a large carrier furnishes cars to a plant facility railroad, it collects no per diem, but if it delivers cars to a short line common carrier non-subscriber coal road to place at coal mines, it [fol. 68] receives per diem. The present Rule 6 would apply in the case of a non-subscriber and would not in the case of a private road. In the case of a common carrier short line, the per diem burden is shifted from the large carrier to the small one (Tr. 102). That private railroad is a sort of industry which has its own tracks and does its

own switching. No charge would be made to that private industry for the use of the car if it is a coal mine. if it is not, then the regular demurrage would be exacted. The per diem rules make no specific provision for relief of short line coal roads but some local agreements are now made. These agreements would not be made if per diem Rule 6 was enforced against non-subscribers. It is a mandatory rule (Tr. 106). If such agreements are made with non-subscribers, they are in violation of Per Diem Rule 6-B. I do not know of any such arrangements. I have been told there are such (Tr. 107). All the arrangements desired, however, could be made between subscribers. A subscriber would pay per diem in every case (Tr. 108), and if there were no reclaim arrangement it would receive none. A subscriber road might under some circumstances get a reclaim but a nonsubscriber does not under any circumstances. That is the only distinction. I think the coal situation is a local condition; is one that might easily be subject to some elasticity in the rule to enable the larger line to make an equitable arrangement as to a reclaim on the part of the short line non-subscriber (Tr. 109). All my suggestions as to the elasticity and relief are based upon the idea that a road was only making a fair return before per diem went in. If per diem results in it no longer getting a fair return, some adjustment should be made. Per diem is not paid on cars on private sidings on the theory that it is an industry (Tr. 110). On such cars no per diem is paid; whereas, if a car is delivered to a short connecting line which has coal mines on its line, the short line pays per diem (Tr. 111). [fol. 69] One is a private track and the other is a common carrier track with more than one industry, and that is the distinction between the two (Tr. 112). The owner of the private track pays no per diem and would only pay demurrage on cars loaded with traffic other than coal, but the nonsubscribing common carrier is supposed to be collecting revenue which covers the per diem (Tr. 113). If a line was only making a fair return when it paid nothing for its cars, it cannot make a fair return when it has to pay for the cars. In such a case paying for the cars curtails its proportion of the joint revenue and transfers it to the other line. When the Boston & Maine places and removes loads at industries located on its own tracks, the industries are given two days to load or unload, and the Boston & Maine,

under the demurrage rules, bears the per diem. If instead of placing cars for unloading on its own tracks the Boston & Maine gives the cars to the York Utilities Company which places them at the industries (Tr. 115), the York Utilities would pay the per diem. Assuming the revenue of the Boston & Maine to be the same in both cases, it saves the per diem during the terminal delay and makes more money on business delivered to the York Utilities Company than on business to industries on its own tracks. On the car unloaded on its own tracks, in two days, the Boston & Maine would pay $2 to the owner of the car (Tr. 116). If it was unloaded on the York Utilities track, the York Utilities would pay that amount while the car was being unloaded. If the York Utilities makes a charge in addition to the through rate, its consignee has to pay more than the Boston & Maine consignee, and would have to pay enough to cover the cost of per diem to the York Utilities (Tr. 117). The freight rate is supposed to include the use of cars by shippers and consignees for loading and unloading without extra charge, and if the Boston & Maine under its rates [fol. 70] contemplates two days' free time to shippers and consignees, I suppose it would make an extra profit when it collects per diem from the York Utilities for the free time it would otherwise have to allow. If free time for consignees was abolished, a consignee's bill would be increased. Before per diem was adopted the short lines did not pay much car hire; they only paid what they wanted (Tr. 118). The termination of free time and the substitution of per diem changed the distribution of profits. Divisions would not have been changed, but the profits of the trunk lines would have been increased. I hoped that since 1902 there would be a chance to readjust divisions, but I do not know how much they have been changed (Tr. 119). In [fol. 71] cases where the short line collected its local rate, the change required it to give part of its local rate to the trunk line and increase the latter's earnings. Such a change would be analogous to the discontinuance of demurrage free time to shippers who would be forced to pay such increase, but there are some cases where the short line would benefit by per diem, depending on its car ownership (Tr. 120). The per diem rates have fluctuated but have generally increased. The original rate was 20¢ which went to 25¢ in 1906 and 50¢ in 1907. In 1908 it went down to 25¢,

in 1910 to 30¢ and 35¢. In 1913 it become 45¢, in 1915 75¢, and in 1917 60¢. In 1920 it was made 90¢ and $1 on November 1, 1920. I should think that these changes were due to car shortage or car surplus (Tr. 121). I hope these conditions will not repeat and I do not expect to see another car panic. It is conceivable that a car shortage or car surplusage might change the rates apart from the principle of compensation to the car owner.

Cross-examination:

When mileage was paid for cars, no mileage was paid on cars in switching service (Tr. 122). That was generally true, due to the fact that switching rates were not high enough to take care of car hire. We found it impractical to change the switching rates all over the country so as to take care of the additional expense of car hire. In the case of the Long Island Railroad, we raised the switching charge one dollar a car to cover car hire, which we found had been necessary for the Long Island to pay (Tr. 123). Under the current rules reclaims are determined by frequent checks of the switching line records to determine the average length of time that the car is detained. The average reclaim time varies. I would not recommend changing the switching rate as often as reclaim is changed. A fair rate [fol. 72] should be made and let go at that. It is true that the time that the different switching roads take to switch cars varies. I have never been fully convinced that the time required to switch the car should vary as much as the actual time does and the original rule said that the reclaim was to be based on the time required (Tr. 124), but admitting that the cost of car hire to a switching road varies, so does the cost of labor and supplies vary, yet the switching rate is not varied every year to meet those differences. In the Eastern cities the rate was adjusted or found sufficiently high to discontinue reclaim. If the switching rate turned out to be too low, it was adjusted, just as any division of the rate is adjusted. If an amount was to be added to switching charges for the sole purpose of taking cars for car hire, I would have said it was impracticable to change the charge every time the car hire expense varied (Tr. 125), except that it is being done every year with a great many switching costs through this awk-ard device of a switching reclaim. The switching reclaim rule does not say

that the switching reclaim shall be equivalent to the amount paid for per diem by the switching road. It is based on the time required. If the variation in per diem, subject to reclaim, varies sufficiently the charge made to cover it ought to vary with it (Tr. 126). I do not know of any road which does not receive per diem reclaims but has a switching charge which varies in accordance with the length of time it requires to handle cars in switching service. Reclaim operates to produce the same effect as an increase in the switching charge (Tr. 127). It has that effect except that it has this advantage to the shipper, that in the case of a switching charge which is not absorbed, the trunk line bears an expense that would otherwise be borne by the shipper or consignees. If switching charges varied to take care of car hire and were not absorbed, the shipper or con- [fol. 73] signee would have to pay the higher charge. In Washington, Baltimore and Philadelphia, switching reclaim is taken care of in the switching charges (Tr. 128). I think most of the switching charges in Washington are absorbed. In that case the trunk line bears the per diem the same as though it were paying a reclaim. The Washington situation which I refer to is coal from the B. & O. delivered at the Navy Yard, which is handled on a switching charge, and I understand there is no reclaim. The Pennsylvania handles it from the B. & O. to the Navy Yard and gets no reclaim. I know that the road receives an arbitrary amount and I think that it is shown in the switching tariff. I understand the service is performed within the switching limits of Washington. I do not find the interchange of cars at the particular hour of midnight a subject for criticism of the per diem rules (Tr. 130). We had a good deal of difficulty establishing it, because a good many roads started the day at 7 or 8 o'clock in the morning and that lead to a good deal of difficulty in the first year of per diem because the dates came out wrong and there would be differences of one day between two roads, but the present conditions would obtain no matter what hour was fixed. The present per diem rules are not as elastic as formerly because of Rule 6, which provides what non-subscriber roads shall do. Section B made that rule a good deal more drastic (Tr. 131). Prior to the adoption of this rule its requirements were recommended in the form of a resolution that was not obligatory. It also seems to me that Rule

5 is not as elastic as it was formerly (Tr. 132). The two principal respects in which the rules are not as elastic now as they were are that they require a non-subscriber to pay per diem while it receives only mileage on its cars and that they prevent the payment of reclaim or allowance to a non-subscriber. If a Trunk line pays per diem to a nonsubscriber, the nonsubscriber should certainly pay per diem [fol. 74] to the Trunk line. That is not unfair. I have never heard a rule proposed requiring a trunk line to pay per diem to a nonsubscriber and relieve the nonsubscriber from paying the same per diem to the trunk line (Tr. 133). I do not say that it was improper to allow a switching line with a haul of a certain length to get a reclaim but not to allow the reclaim if it joined in the through rate and did not haul the car any further. We had to draw the line somewhere and we therefore allowed reclaim to the switching line and did not provide for the other, but we left the rule so that provision could be made for the other road if necessary. I do not admit any difference in the character of service, but that was a compromise we made. We made the best terms we could (Tr. 135). It frequently happens that a trunk line like the New York Central or Pennsylvania will perform a less service under a division of the rate and get no reclaim than it would perform under a switching charge in a large terminal where it gets a reclaim, but it is necessary to draw the line somewhere and we knew of no better place. I do not think it can be drawn on the distance the car is hauled (Tr. 136). My judgment, after a good many years, is that the line was drawn at as good a place as possible. At that time no distinction was made between subscribers and nonsubscribers. If short lines accounted for cars direct to connections, it would simplify their accounting very much, but it would not transfer so much expense to the connecting trunk line although — would have the same process to go through as the short line, because the connecting trunk line is already settling with all of its road and to settle for a few more days is a very different thing than opening up a new account with all of them. The connecting trunk line can handle that cheaper than a short line. They are already doing some of it but would impose some additional cost on it. I know of no practical way of deter- [fol. 75] mining the amount of per diem a car user should pay depending upon wear and tear while in the possession

of the user. The only unit in that connection is the mile, and a car may suffer more in going a quarter of a mile in a yard than it suffers in going 20 miles on the road. Besides that would put it back to the mileage system of car hire with all its evils (Tr. 138). All changes in the per diem rate were made upon proper notice to members. Voting in the American Railway Association is on the basis of membership, and two-thirds of the car ownership is in the Association. Memberships are based on mileage. Every member had one vote. If it had 2,000 miles it had a second vote, and so on; one system had eight votes. A majority of the membership and two-thirds of the cars would carry an amendment to the per diem rules. Under that system there was nothing very sudden in the changes (Tr. 132). I did not mean to say that the short lines of less than 100 miles had a vote; only the regular members of the Association had a vote. Associate membership was established after the per diem rules were established, and when the per diem rules were adopted there were a number of railroads members that would not be admitted as members now. When I spoke of a fair return to a short line, I meant the sort of a return that the Commission would call a fair return now (Tr. 140). I said that the rates of the trunk lines generally included an allowance for the cost of owning the car; I think that would also be true of the short lines. If that were true in the case of the short lines, the per diem rules as a whole would be just as fair to short lines as to trunk lines (Tr. 141). When we started the per diem agreement we wanted everybody to come into the Association, but we found that that would include roads concerning which we had doubts as to their status as common carriers. We were advised to exclude them, which we did. Since then I understand they have been admitted under the Supreme Court decision in the Tap Line Case. Except for roads as to whose status we were in doubt, we thought all [fol. 76] railroads should be treated alike in car settlements (Tr. 141½). I think it would be a good plan to have switching rates increased so that switching roads subject to Rule 5 could pay car hire without reclaim. In 1902, in many cases switching lines did not make enough to cover the expense of car ownership and provide a fair return. Since reclaim persists, I assume that is still true (Tr. 142).

Redirect examination:

In drawing the line that I spoke of, I intended to say that if the average line haul of a road was so short, or its compensation for a short haul was so small that the addition of per diem interfered with its fair return, I saw no reason why that should not be covered by a reclaim similar to a switching reclaim. It would be covered much better by an increase in divisions.

I was chairman of the American Railway Clearing House in the old days (Tr. 147). They kept track of the location of cars on foreign railroads, and roads settling per diem with each other at the end of the month settled with the Clearing House, which then paid the other roads (Tr. 148). That was practical when per diem was paid on acknowledged indebtedness. When reclaim was first put out the executives sustained the traffic people in the conflict of opinion between the traffic people and the transportation people, saying that reclaim was not permanent enough to change all the switching rates for (Tr. 149). In the early years of per diem the Association sent out a questionnaire asking whether switching charges should be increased to cover car hire, and the answers were about even. The situation has changed at some Eastern points (Tr. 150). I think it would be advisable to get the views of the traffic men if, before placing several hundred short lines in joint tariffs, the Commission, in deciding the question of allowances to be made to short lines, should first have to find [fol. 77] whether those allowances should be made through car hire or through divisions. I think that both traffic associations and individual railroads should be consulted (Tr. 151). Mr. Collyer is chairman of the traffic section of the American Railway Association, and I would suggest that he be consulted (Tr. 152).

(Mr. Towner: In connection with that point, I would like to direct your attention to the fact that if the owner of a freight car is entitled to receive from the using line an amount per day equal to the cost of maintaining that car, that that right can scarcely be taken away from him or abrogated by any arrangements as to tariffs. * * * I merely want to point out at this time that the owner of a freight car is entitled to receive compensation for its use by somebody else. * * * and that right would not be

varied by reason of the fact that a short line might or might not be receiving sufficient compensation from its connecting carriers for the service it performs.) (Tr. 153.)

I do not know whether or not short lines would have to join a number of traffic associations and help contribute to the expenses of those associations if they were placed in joint tariffs. Terminal switching roads are largely controlled by trunk lines, that is, speaking of the belt lines which operate in switching districts. Making a charge per ton, per car or per hundred pounds makes no different in the reclaim (Tr. 156). It might be that reclaim allowed by trunk lines to switching lines owned by trunk lines would be indirectly allowing themselves a reclaim, but switching lines are owned in different proportions of stock, and the reclaim paid by one trunk line might go to another trunk line. The length of a terminal switching road makes no difference with reclaim if it is within switching limits. The B. & O. C. T. has 80 miles of first track, about 137 miles of first and second main track, and 282 miles of track alto- [fol. 78] gether. I do not know whether that track is all within the switching limits, but it would get its reclaim just the same as though it was only 14 or 15 miles long (Tr. 157), if it handled the traffic on a switching charge. In classifying terminal roads, I see no distinction in substance between the character of service performed by a terminal road within a switching district on a local tariff charge, and the character of service performed by a terminal road outside of the switching district on a local tariff charge. So far as I have been able to find, the physical operations would be practically identical; the trunk line would place the car on the interchange track, the switching road would come along and hook its engine on and haul the car down the line 1 mile, 5 miles, or 25 miles. If the road had a local tariff charge it would be the same sort of a charge whether it was within a switching district or without (Tr. 158). I refer to a switching rate on one side and a shipment made on a local rate on the other. When you come to divisions, the question is more or less complicated, but even when the short line gets a division, it is just the same kind of money as the local rate is paid in, or the switching rate is paid in. The amount is determined in a different way (Tr. 159). I have never been able to see any difference between line-haul service performed outside a switching

lines supplied their own cars, the larger lines would now be relieved of furnishing a certain proportion of the cars they now give the short lines for loading but would have to handle an increased variety of equipment and that would be a disadvantage. It would also disadvantage the larger lines since the short lines, a large part of which are originating roads, would use their own cars for outbound loading (Tr. 83). It would increase the surplus of cars on the large lines. If short lines had enough cars and per diem approximated the cost of ownership, the short line would not profit, the whole thing would even up. If a short line now pays per diem, it would be the same thing if they owned cars, supposing the rate is right (Tr. 84). I have advocated that the number of days that cars are on the line of the short line should be the measure of the number of cars that it should own, but the Railroad Administration found it impracticable and I think there must be other elements taken into consideration (Tr. 86). The cases such as that of a railroad with a 10-mile haul, connecting with a line which gets a 100-mile haul, on which the through rate is $1 per ton, the short line getting 10¢ of the through rate, but using the car half the time necessary on the haul, was what made the Railroad Administration give up the idea that the days a car was on a line was a measure of the number of cars any railroad ought to own. That would make it necessary for a 10-mile road to own the same number of cars as the 100-mile lines and that is a case where the financial resources of the two lines ought to be considered (Tr. 87).

Q. Do you think earnings from traffic should be a factor entitled to consideration in determining the number of cars a carrier should furnish for joint traffic?

[fol. 64] Mr. Towner: I am going to object to that now. This is not a case in which the compensation of the short lines is to be determined.

Director Bartel: I do not think we will go into the question of divisions. I did not understand his question to be based on that (Tr. 88).

The Witness: I think the revenues enjoyed by two participating carriers from joint traffic should be one of the circumstances to be considered in determining the number or cars each carrier should furnish for the joint traffic. Competition oiginally compelled railroads owning cars to

allow the use of those cars by lines not owning cars. The line which could offer through service gave better service and it was to give better service that cars were interchanged between lines. The desire to get traffic also caused roads to allow their cars to be used by other roads which had a large traffic which might be handled by those connecting lines. That was largely the reason why one road gave another road its own empty cars so that it should be returned with a load (Tr. 89). That consideration is still of some consequence now. Formerly a good deal of car interchange was on the car-for-car basis, but it was impossible to keep up an even interchange, so this method of compensation developed. Compensation to the car owner is now much more important than it was (Tr. 90). I see no reason for distinguishing between the payment of car hire by short lines to its immediate connections and its payment to other lines. That is a matter of just compensation to car owners. Local situations are entirely different. I can imagine that if a trunk line has surplus cars and delivers them to a short line for loading, that the short line ought to be able to reclaim, but I do not put it down as a general rule. If it [fol. 65] was found to be the only way to move business, I would probably advocate it, and if it were done under the reclaim rule, it would be in line with the Per Diem Code (Tr. 91). That would probably only be done when there was a car surplus, but not when there was no surplus. I see no reason why carriers should not be free to make arrangements of that sort when mutually advantageous. The fighting rule in the Per Diem Code was Rule 6, which resulted in non-subscriber car owners being required to accept compensation for the use of their cars on a mileage basis when subscriber car owners require compensation on the per diem basis. It was quite successful in getting roads into the per diem. I highly approved of it at that time, and we would never have gotten per diem started without it (Tr. 92). All the big roads are now in, and it seems to be a question of coercing certain little roads to come into the per diem. We certainly coerced the New Haven. It was one of the chief objections to per diem but when it found itself up against the situation that if it were a non-per diem road that the connection which gave a car to it was responsible for the per diem, the New Haven felt that something would have to be done, so it signed the agreement

district, on a local rate, and the same service performed inside a switching district on a switching charge, but there are always different circumstances taken into consideration in the makeup of different charges (Tr. 160). A switching charge can also be absorbed, but the Commission has held that a local rate or a division of a line-haul carrier cannot be absorbed by a connecting line. It is confusing when you are trying to find out the situation in a switching district; it is difficult to say whether the amount in question is a switching rate or an allowance. In both cases they can be absorbed, as I understand it, but if it is a local rate it can-
[fol. 79] not be absorbed (Tr. 161). The elimination of reclaim on inter-terminal switching, made by Paragraph D of Rule 5 since I left the Association, seems to me to be a very good change. I am in accord with no reclaim on inter-terminal business. That seems to me a step to the end which I have advocated, that the switching charge cover the car-hire charge, for certainly then the inter-terminal charge must cover the car-hire expense because no reclaim is allowed (Tr. 162). I am not familiar with the Birmingham Southern rule, but assume that it is the same in principle as the Industrial Demurrage rule. We believed that such a rule was necessary in the period when we did not know that some roads were common carriers or plant facilities. The Association never went on record in favor of the Industrial Rule, the so-called C. S. Rule 59 (Tr. 163). In my opinion it never gave the same incentive for prompt movement that was given by the per diem rules with switching reclaim. The Industrial Rule was granted primarily to plant facilities, but was also given in a good many cases to common carriers (Tr. 164). The National Association of Railroad Commissioners, of which Commissioner Lane was chairman, condemned the Industrial Rule some years ago. It is the practical equivalent of the present Birmingham Southern rule (Tr. 165). The rule that was condemned was the same as was put in the Demurrage rule in 1911. I see no difference in the character of service performed by a terminal road outside a switching district and the service performed by a terminal road within a switching district, the same kind of engine, the same kind of car, the same kind of track, the same kind of men, and the same kind of money are involved. To illustrate, if the B. & O. C. T. Railroad was not in a switching district, but handled

the same kind at the same rate per car of traffic, it would get no reclaim on its service (Tr. 166). If the Virginia [fol. 80] Blue Ridge was within the Chicago switching district, handling the same traffic on a switching charge, it would be entitled to reclaim. I am not familiar with those lines within the switching district of Chicago which get divisions but no reclaim (Tr. 167). As between allowing a road two days' free time and allowing a reclaim of two days per car, on traffic which would be entitled to a reclaim, the essential distinction is that the per diem system, with or without reclaim, is the best incentive to prompt movement that has been devised. It makes no difference whether you have reclaim or not, if you get the car off the line before midnight, you do not pay for the next day. It is quite different under a system providing for free time like the demurrage system. If I have two days to handle a car, I am not going to spend any money to handle it in one day (Tr. 168). Even when reclaim is allowed, the incentive persists, as the switching road pays the per diem. Reclaim does not or should not detrack from the incentive (Tr. 169). One difficulty with reclaim under the annual checks is that when a railroad improves its service to get the cars back within the reclaim period, the reclaim period is cut down, and the incentive was not as permanent as I thought it should be. The average detention in one year is used as a basis for the reclaim in that year or until another check is made. If the reclaim is three days in one year, with an average detention of four days, the next year after a check is made the reclaim would be four days (Tr. 170). If the reclaim next year were four days and the detention only three days, the reclaim would be reduced in the following year.

(Examiner Rice: There were some statements made to the effect there where a short line was not a subscriber, the trunk lines are obligated to do certain accounting which the short lines should do. Now in order that we may have a [fol. 81] clear understanding of that, I am going to ask you to trace a car through two or three interchanges and find out what junction reports, interchange reports, per diem reports and per diem settlements are necessary to be made where both roads are subscribers to the per diem agreement and in cases where roads are non-subscribers. I can see that a short road that has several connection, that

it would be desirable to make it a subscriber and have it make reports, but the point I am in doubt about is with respect to these railroads which have only one outlet, only one connection) (Tr. 171).

The Witness: If a shipper on the Union Pacific should load a car and consign it to the Sewell Valley Railroad, the latter having only one outlet, and routes it via Chicago where the Belt Railway of Chicago delivers it to the Chesapeake & Ohio; both the Belt and the Chesapeake & Ohio would make an interchange report for use in their own offices, that interchange report covering all cars interchanged and those two reports should be checked against each other by the agent to make sure they are correct. This interchange report being sent to the car record office of the Chicago Belt, the Belt then makes a junction report showing that interchange and sends it to the Union Pacific, and the three roads would have a report of that interchange (Tr. 172). That would be three reports. If the C. & O. retained the car to the end of the month, it would make a per diem report to the Union Pacific, giving the car number and the number of days the car had been on the C. & O., up to the end of the month, which would be followed by a financial settlement. The per diem reports are usually sent with a recapitulation indicating just how much the C. & O. is willing to pay the Union Pacific for all its cars, but the per diem report shows each car number and the total number of days for each car. If the car had been delivered to the Sewell Valley before the end of the month, and unloaded [fol. 82] and returned to the C. & O., the Sewell Valley, not being a subscriber, there would be no substantial difference in the report that the C. & O. would make to the Union Pacific had the car remained on its rails instead of going over the Sewell Valley and back (Tr. 173), unless there has been some recent change in the report. The Union Pacific, upon getting the report, looks to the Chesapeake & Ohio for per diem until the C. & O. delivers the car to another subscriber and would ignore the fact that the car had been on the Sewell Valley. That was the original system. From an accounting standpoint it would not be necessary for the Chesapeake & Ohio to furnish junction report to the Union Pacific, but my impression is that those junction reports are sent just the same so that car can be traced in case it gets delayed or to take up the question of

necessary repairs if the car is injured or destroyed (Tr. 174). Subscribers must make the interchange report at the junction point and check it up with the connecting road and send it to headquarters and transcribe the necessary information for the car owners. The nonsubscriber is not bound by any agreement to do that, but, I should say, it probably does do about the same thing. If the Sewell Valley was a subscriber and had received the car from the Chesapeake & Ohio, which it kept a few days and returned to the C. & O. before the end of the month, it would make a per diem report at the end of the month. The Union Pacific would have one additional account and would make one additional settlement (Tr. 175) and receive one additional per diem report at the end of the month. That is not new under per diem. It was the arrangement under the mileage system (Tr. 176). If the Sewell Valley was a subscriber, there would be still one settlement between it and the Chesapeake & Ohio applying only to the cars of those two roads. If the C. & O. should deliver to the Sewell Valley 10 or 15 cars owned by different railroads and the Sewell Valley was a [fol. 83] subscriber, it would make separate reports to all these 10 or 15 roads which would all keep separate accounts. I cannot put my finger on any specific accounting expense that the Chesapeake & Ohio would incur if the Sewell Valley were a nonsubscriber over that it would incur if the Sewell Valley were a subscriber (Tr. 177). The Chesapeake & Ohio, in settling with the Union Pacific, would have to settle for one more car (Tr. 178). I do not see any additional expense and would like to correct my answer made previously, because the only difference would be it would report 10 days on the Union Pacific car if the Sewell Valley were a nonsubscriber, and it would report 8 days if it were a subscriber. The Chesapeake & Ohio would have to collect, however, from the Sewell Valley. I can imagine that would be a very considerable expense, but I do not look at it as an accounting expense. I think that in the settlement at the end of the month between the Sewell Valley and the Chesapeake & Ohio there would be some additional expense over what there would be if the Sewell Valley was a subscriber. I do not know what reports the Sewell Valley would make. Aside from the collection expense, I could see other expense involved in settling with a nonsubscriber if

it did not adopt the per diem accounting rules. The nonsubscriber might decline to check the interchange report; that would result in question of one or two days as to the length of time a number of cars in a month were on that road, and that would all have to be straightened out in the correspondence, then would come the collection of money and I could imagine a nonsubscriber by delays could make his collection more expensive than collections from a subscriber (Tr. 180). I do not know if the trunk lines require the short line nonsubscribers to give bonds. If they gave a bond some of these difficulties would disappear. If the [fol. 84] Chesapeake & Ohio delivered its own cars to the Sewell Valley, it would have to make collection on those cars. If at the same time it collected on Union Pacific cars (Tr. 181), I should not think the collecting expenses would be any greater in collecting for their own cars and the Union Pacific cars, than if it were collecting only for its own cars. If the Sewell Valley was a subscriber, its accounting expense would be increased and the accounting expense of the car owners to which it reported would be increased. My impression is that railroads other than the Long Island had an increase in switching rate to take care of per diem, and I am sure the Long Island did (Tr. 182). It is so long ago I cannot name others. Many short lines who are nonsubscribers to the per diem rules subscribe or adhere to the interchange rules which deal with damage to cars, and are now sustaining whatever expense is attendant upon keeping proper accounts and for making reports. These reports cover not only damage but ordinary wear and tear in certain cases (Tr. 183). If there is no work done there is no accounting.

SHIRLEY SEWARD was called as a witness and, being duly sworn, testified as follows:

I am midwest representative of the American Short Line Railroad Association and have been employed by it for seven years (Tr. 184). I have called upon the managements of about 300 short lines during my connection with the Association. My work has dealt almost exclusively with inter-carrier relations, especially the subjects of car hire and divisions of joint freight revenues. Last fall the

first road I called on was the Marinette, Tomahawk & Western Railway Company. It operates out of Tomahawk in three directions (Tr. 185) and connects with the Soo Line at Bradley, the North Western at Harrison and the Milwaukee at Tomahawk, Wis. It orders cars from the [fol. 85] North Western and brings the empties to Tomahawk, then to Spirit Falls where shippers are allowed 48 hours' free time for loading, and after loading the cars are returned to the North Western. The same conditions apply to empties received from the Soo Line. The short line does not operate through trains, Tomahawk being the operating terminal. The same conditions apply to empties received from the Soo at Bradley. The average per diem accruals are $5 in good weather (Tr. 186). This is increased by bad weather and holidays. Demurrage is lessened by the average agreement to the short line shippers. The road has divisions of through rates, except on pulpwood, and it is on that business that the per diem leaps into a ruinous percentage of the earnings. For example, on 558 cars of pulpwood in 1923 the earnings were $11,338 and per diem $3,981, or 35%. The percentage would now be higher because the rates have been cut one-third. The percentages shown in answer to question No. 20 of the questionnaire are erroneous (Tr. 187). The percentage of per diem accruals to freight revenues is shown as 15.27, whereas it would be close to 20%. For over 20 years prior to Federal control, this road had no car hire arrangements other than the collection of demurrage from shippers and consignees. This demurrage was turned over to the trunk lines on the cars which were used (Tr. 189). I saw no tariff authority for this practice. It was a gentleman's agreement. The tariffs that applied to that time have been destroyed (Tr. 190). After Federal control it paid a per diem bill of more than $30,000 presented by the Director General of Railroads. On March 1, 1920, the three connecting trunk lines resumed the old basis of no car hire at all. Subsequently a memorandum was submitted by the Wisconsin Demurrage Bureau for the Milwaukee and the Soo Line (Tr. 191), requiring the payment of $1 per day to [fol. 86] be computed from the first 7 A. M. following the availability of the equipment to the short line. A minimum of two days' free time was provided for, with two more days for loading and unloading and four additional days

for a car moving under load in both directions, Sundays and holidays not to be counted. At about the same time the Northwestern offered the short line a car hire agreement even more favorable than those above mentioned. The situation prior to 1902, stated in the questionnaire was the demurrage arrangement I spoke of (Tr. 192). I do not know whether the demurrage collected by the short line and paid to the trunk line was considered by the short line as compensation for the car (Tr. 193). The demurrage basis referred to in the questionnaire is the same situation I described. The proposals of the trunk lines were under consideration when Rule 6-(b) was put in the per diem rules. Since August 15, 1922, the short line has paid straight per diem. Protests were carried to the trunk lines, who declined to consider them on the ground that they were compelled to pursue the laws of the American Railway Association (Tr. 194). The Association declined to permit the North Western to modify it, although the North Western sought to substitute the modified demurrage agreement referred to above. From that date the car hire bills of this road increased from nothing to about $2,500 per month, or approximately 20% of gross line revenue and an increase in divisions was refused by the three trunk lines to off-set this per diem. The operating department said that the short line would have to get increased divisions and the traffic department said that per diem was an operating matter. This road is not a subscriber to the per diem rules, although the questionnaire shows that it is a subscriber (Tr. 196). The road has not the clerical force to make reports to the legion of car owners and issue monthly settlements to those owners (Tr. 198). It performs some switching service but does not get reclaim because it is a nonsubscriber. The cost of reporting to all [fol. 87] car owners would be more than the reclaim. The Pacific Northwest Traction Company had about the same arrangement but it was subsequently withdrawn. It connects with the Milwaukee, Great Northern and Northern Pacific; it operates two north and south lines in Washington with a maximum haul of 28 miles and an average haul of 15 miles (Tr. 199). It takes at least four days for a branch line movement of a car and six days for a loaded movement in both directions. It should, therefore, be allowed four days' free time for a loaded car in one direc-

tion and six days for a loaded car in both directions. That is the present basis. In the answer of this road to the questionnaire it referred only to the loaded movement in one direction (Tr. 200). It wants the present per diem rate with free time of four days on a load in one direction and six days on a road in both directions. The same arrangements exist with all connections. The Hillsboro & Northeastern Railway connects with the North Western at Union Center, and runs 5 miles west to the stub-end at Hillsboro. It originates dairy products, livestock and farm produce. Prior to 1922, it was allowed 2 days' free time with per diem thereafter. Hillsboro is close enough to the Milwaukee that it requires active solicitation on the part of the short line to assemble much of the agricultural tonnage for the North Western. On September 1, 1922, the North Western enforced straight per diem and discontinued the Free time and in November, 1923 increased the divisions of the Hillsboro line. This increase was allowed because of the change in per diem requirements (Tr. 202). The Omaha, Lincoln & Beatrice Railway is an electric railroad between Lincoln, Nebraska and Bethany, a distance of six miles. It connects with the Missouri Pacific at Lincoln. The road is on a demurrage basis of car hire with deliveries so timed that the charges are passed to the shipper or consignee, collected by the electric line and remitted to [fol. 88] the connections (Tr. 203). The road publishes a local tariff, but I think the same rates apply to its deliveries as to those on the trunk lines to the junction (Tr. 204). Its switching rate is absorbed. It is a switching road in name because of the manner in which it publishes its tariffs. If it changed the manner of publication next month, it would be known as a road haul line. The Ozark Southern connects with the Frisco at Mansfield, Missouri, and runs 13 miles south. It has no through rates, is not a subscriber and pays per diem without free time. The Frisco claims that it is not engaged in interstate commerce, and has urged that as a reason for declining to publish through rates and divisions (Tr. 205) but that when it comes to car hire, the Ozark suddenly becomes a regular railroad and it should pay straight per diem. On Ozark traffic the Frisco gets not only its local rates but part of the revenue of the short line through the per diem and does not sustain as much expense in interchanging the traffic as it does in serv-

ing an industry on its own rails. I do not know if this road files tariffs, but they make annual reports. It should have three days' free time with per diem thereafter (Tr. 206), which would be cheaper for the Frisco, than in serving an industry on its own rails. The Big Sandy & Kentucky River Railway is 25 miles long and connects with the Chesapeake & Ohio at Dawkins, Kentucky. It serves 4 coal mines, 4 lumber mills and several small communities. Its capital stock is owned by the Dawkins Lumber Company, furnishing 22% of the traffic. It is a line haul carrier performing some switching service for the C. & O. (Tr. 207), but gets no reclaim because it is a nonsubscriber. The Chesapeake & Ohio receives its local rates on all lumber constituting one-third of the outbound tonnage, the short line receiving only its local rate, and on coal the short line gets a small division of the through rate. It paid no car [fol. 89] hire until May 1, 1919. From then until May 1, 1921, it was on a demurrage after 48 hours' free time (Tr. 208). The answer to the questionnaire says there was no charge. In June, 1921, it was put on per diem without reclaim (Tr. 209). This was done without notice (Tr. 210) and thereafter bills were submitted on that basis. The Chesapeake & Ohio stated that this was done in conformity to the rules of the Association. These bills were paid until April, 1924, when they were declined. The Chesapeake & Ohio then deducted the per diem from the junction settlements. I think the total amounts withheld must now be over $40,000. The Chesapeake & Ohio has been forcibly taking $11,000 a year from this short line although the lumber which is one-third of the outbound tonnage moves on local rates without shrinkage by the Chesapeake & Ohio (Tr. 211). The short line estimates that it costs the Chesapeake & Ohio about $15 a car to make delivery at its own industries which it escapes on traffic interchanged with the Big Sandy and yet it insists on taking a substantial portion of the short line's revenue (Tr. 212). If the Big Sandy discontinued operation, the Chesapeake & Ohio would lose its traffic. The Ouachita & Northwestern operates about 35 miles in Louisiana and connects with the Missouri Pacific and Tremont & Gulf. It is on straight demurrage with the Tremont & Gulf and modified demurrage of 3 and 6 days' free time with the Missouri Pacific. It receives divisions of through rates and operates at a deficit. In 1925, on the

per diem basis, its car hire would have been about $12,000 (Tr. 213). The Stewartstown Railroad is a stub-end line from Stewartstown, Pennsylvania, 16 miles to a connection with the Pennsylvania. It has been a subscriber for years (Tr. 214). I cannot understand why it is, as it has to settle separately with car owners and gains nothing in reclaim. On some traffic to this railroad the Pennsylvania not only receives its full local rates, but a share of the short line's [fol. 90] revenue (Tr. 215). I don't know why this road does not take up with the Pennsylvania the matter of increasing its divisions (Tr. 216). The Tabor & Northern Railway is 11 miles long and connects with the Wabash and Burlington at Malvern, Iowa. It is a nonsubscriber and settles direct with its connections on foreign cars used. It participates in through rates and divisions and receives two days' free time with per diem thereafter. It receives $3.50 per car for switching at the junction for the Burlington, the same per diem conditions applying as on road-haul movements (Tr. 217). The Narragansett Pier Railroad runs 8 miles east from a connection with the New Haven. 97% of its tonnage is inbound. It operates one train a day and its cost of operation is increased because the New Haven sets cars for interchange in its own yards (Tr. 218).

Director Bartel: The answers to the questionnaires of the industrial roads that were required to be filed with the Commission by order are part of the record (Tr. 219).

The Witness: The Androscoggin & Kennebec Railway operates 145 miles of electric railway in Maine, primarily for passengers. Some freight service is performed in which Bath, Maine, is included. Bath is also served by the Maine Central which has very little trackage paralleling the water front, but the electric line has a track paralleling the water front (Tr. 221). Before the Maine Central would permit the making of a connection there, it required the electric line to pay per diem and allow the water front industries, demurrage. The electric line has no through rates. It performs a switching service averaging one-half mile per car. Its switching charges vary from 1¢ to 2¼¢ per 100 pounds. The electric line insisted to the Maine Central that it was entitled to a switching reclaim but was unsuccessful in an application for subscription to the per diem code. I understand that at the present time the elec-

[fol. 91] tric line has a modified Birmingham Southern basis of car hire (Tr. 222). The Wyoming & Missouri River Railroad is a stub-end line connecting with the North Western at Belle Fourche, S. D., and running to Aladdin, Wyo., the terminal (Tr. 223). It owns no equipment and pays the North Western straight per diem which amounts to at least $7 per car and sometimes $14. The traffic of the road is general in nature and small in volume; a gasoline motor car makes one round-trip a day and a freight train makes a round-trip one day a week. Gross revenue in 1924 was $18,000. Some through rates and some local rates are in effect (Tr. 224). The road is 10 to 18 miles long and per diem is high because it runs only one train a week. If the North Western sets out a car of freight just after the short line train has left, it will be a week before it will get back and get that car. The road is economically operated. The Trinity Valley Southern is a stub-end Texas line operated from Oakhurst, its stub-end eastward 7 miles to Dodge, there connecting with the Internal-Great Northern. It is a tap line, principally handling forest products. Its freight train makes a round-trip each day (Tr. 225). It makes car-hire settlements direct with its connection, its divisions being restricted by the tap line scale. Last year the I-Gn made an arrangement to charge cars to the short line only as they are taken by it from the interchange track, which is a departure from the per diem rules under which per diem would be charged when the cars are placed there (Tr. 226). The White River Railroad, the stub-end of which is Rochester, is 20 miles long and connects with the Central Vermont at Bethel. 80% of its tonnage is outbound. It is a subscriber, pays straight per diem and has no free time, and has been unsuccessful in getting a modification of that basis. Under its operation of one train a day, if a shipper takes two days' free time, a car cannot be returned to the Central Vermont in less than four days, making a minimum [fol. 92] per diem charge of $3 per car under the most favorable circumstances (Tr. 227). It also performs a weighing and inspection service. The Warren & Ouachita Valley Railroad runs from Warren, Ark., to Banks, Ark., and connects with the Missouri Pacific at Warren and the Rock Island at Banks. It is 16 miles in length and a party to the Tap Line Case. Prior to May 1, 1919, it paid car hire on an average demurrage basis, and since then has operated

under Circular No. CS-59 of the Railroad Administration, a basis similar to the Birmingham Southern plan. In 1925 it paid $280 in car hire and on straight per diem it would have paid $12,270 or 16% of its freight revenues (Tr. 228). Since its divisions are fixed by the tap line scale this would be equivalent to a reduction of 16% in gross freight revenue. The Central Railroad of Arkansas operates 7 miles from Plainview, Ark., to a connection with the Rock Island at Okla. Its freight train makes two round-trips daily out of Plainview, carrying mixed traffic. It is controlled by stockholders affiliated with proprietary interest. It pays car hire on the industrial road basis of Circular CS-59. In 1925 it paid $179 and on per diem it would have paid $5400 or 13½% of its gross interline freight revenue. Its gross freight revenue in 1925 was $61,000 (Tr. 229) and its gross interline freight revenue was $40,000. Its interchange hour with the Rock Island is 7 A. M. following the date the car is taken by the short line. The Beaver, Meade & Englewood connects with the Missouri-Kansas-Texas at Forgan, Okla., runs 7 miles south and thence 28 miles west to Baker. It is now constructing 11 additional miles to connect with the Rock Island at Hooker. 75% of its tonnage is outbound grain and livestock (Tr. 230). It is not a subscriber to the per diem rules and makes settlement with the Missouri-Kansas-Texas on a straight per diem basis without free time. Its per diem is about 13% of gross freight revenue [fol. 93] and it has operated at a deficit since 1915. It furnishes grain doors, etc. at an average cost of $10 per car, and the average per diem is about $4, and the total of $14 is nearly 30% of the gross revenue (Tr. 231).

Mr. Towner: I am not prepared to quarrel with anybody about the cost of cooperage of grain cars. I did not know it is in issue.

Director Bartel: Cooperage is not in issue in this case, and he is just giving that as a picture to show the expense to which they are put. It has no particular bearing here.

The Witness: The Waterville Railroad connects with the Great Northern at Douglas, Washington, and runs 5 miles west to Waterville, a stub-end. Gross revenue is about $10,000 a year, half of which accrues from outbound wheat movements. The inbound movements consist principally of coal and hardwoods (Tr. 232). The deficit per year is

from $3,000 up. Until recently no through rates were in effect but since it has been allowed a division of through rates of approximately 3.9 cents, which is about 15% on the combination of locals, the rates being lowered in order to prevent trucking of the grain. It pays per diem with two days' free time, interchange being reckoned from 7 A. M. (Tr. 233). I do not know what they want (Tr. 234). The Montana Western Railway is controlled by a land and water company, being built in 1910 to serve land and irrigation projects. It runs 20 miles northwest to Valier, the stub-end, from a connection with the Great Northern at Conrad, Montana. It pays on a demurrage basis with three days' free time (Tr. 235). In practice it pays no car hire. It has no through rates or divisions except on grain to Minneapolis. The road has a demurrage arrangement with shippers (Tr. 236). The Great Northern allows it a proportional rate 3 cents less at Conrad than the Great North-
[fol. 94] ern-Conrad rate, to which it adds 2½¢, making its proportion 5½¢. It has always operated at a deficit. The Great Northern has assisted it finally and recently was preparing to extend further aid to prevent its total abandonment. The Fairchild & Northeastern Railway runs from a connection with the North Western at Fairchild, Wisconsin, 38 miles to a connection with the Soo Line at Owen. It also connects with the Soo Line at Greenwood (Tr. 237). It was formerly known as the Central Wisconsin Railway. About September 1, 1923, it was put on a straight per diem basis. It protested and an agreement with the trunk lines was made retroactive to 1920, under which it was put on a demurrage basis with four days' free time on cars loaded inbound or outbound and six days' free time on cars loaded in and out. It has a small division on some traffic. The Dansville & Mt. Morris operates 15 miles north from Dansville, New York, to Mt. Morris where it connects with the Erie. It has little or no local traffic and interchanges practically all traffic with the Erie. It runs one train daily in each direction (Tr. 238). It is not a subscriber and for the period January 1, 1923 to December 31, 1925 the per diem accruals averaged 17.26% of the gross freight revenue. It has paid no per diem since December 31, 1917, and now owes $73,214.64 up to September 30, 1926. The matter of free time has been in dispute between it and the Erie. Its car detention in 1923 was 5 days, in 1924 4 days, and in

1925 3.3 days. 76% of its tonnage is inbound (Tr. 239). I do not know the value of the road. It is now being operated by receivers. If it was abandoned it would drive various manufacturers from Dansville (Tr. 240). About 93% of its freight revenue is from traffic interchanged with the Erie, and it receives divisions varying from 10% to 50% and probably averaging 19%. The Ferdinand Railroad connects with the Southern at Huntingburg, Indiana, and runs 7 miles southeast to the stub-end at Ferdinand. The [fol. 95] Southern always has idle freight cars at Huntingburg. Since 1912, the Ferdinand Railroad has paid car hire under an average demurrage agreement, allowing 2 days' free time, but in 1923 the Southern advised that it would have to pay per diem without free time as required by the per diem rules (Tr. 241). It urged the short line to become a subscriber, and was told that the short line preferred to have no change made. In 1924 it paid $119 per diem and in 1925 $52. On the per diem basis, its car hire would cost it about $1600 a year or 13.3% of its gross revenue from freight operation. It has no through rates or divisions (Tr. 242). The Leesville, Slagle & Eastern connects with the Kansas City Southern at Leesville, La., and extends 10 miles northeast to Slagle. Detention of foreign cars is about three days. It operates daily a mixed passenger and freight train, one round-trip and such additional trips as are occasioned by increased tonnage. It makes settlement direct with the Kansas City Southern at the per diem rate, without free time or reclaim. Since 1920 it has tried to get the Birmingham Southern basis (Tr. 243). The Kansas City Southern said it would give relief but was prevented by paragraph (b) of Rule 6. It is a tap line. Its principal tonnage is foreign products, the principal shippers having a community of interest in the railroad. In 1923, 1924 and 1925, per diem was 18.31%, 15.11% and 14.41%, respectively, of gross freight revenue. To New Orleans the short line receives 2¢ on lumber out of a rate of 14¢, the Kansas City Southern receives 5.6¢ for 70 miles, the Gulf Coast Lines receiving the balance. On this traffic the per diem of the Kansas City Southern must be small for it acts as a bridge carrier, bearing none of the terminal operating expense which accrues to the short line. The short line pays $3 per diem out of about $20. The Kansas City Southern receives about $56 out of which its per diem

certainly does not exceed one dollar and frequently nothing [fol. 96] (Tr. 244). Not all the roads I have mentioned are members of my association, and I am not authorized to speak for them (Tr. 245).

Mr. Hitt: We think it would be very dangerous for the American Short Line Railroad Association to speak for individual lines. We are speaking for the situation as a whole. We are not asking for the application of any hard and fast rule. Our main position is that there should be leeway for taking care of individual situations (Tr. 247). This is an inquiry on the Commission's own motion, and we are coming in to contribute such information and light on the subject as we can (Tr. 248).

The Witness: I am certain that there is not a road to which I have referred that is satisfied with its present car-hire basis (Tr. 249). I find no facts as to any of these roads that I have mentioned which suggests any preferential situation, that is that there was something too liberal in their favor (Tr. 250). I misunderstood the previous question, I was thinking you meant would be satisfied with the per diem rules. There are a number of roads satisfied with their present arrangement. They would be satisfied if this proceeding was discontinued. The stock of none of them is owned by a trunk line, but in some cases they are owned by shippers on their lines (Tr. 251). In the majority of cases the ownership is independent of any industry or manufacturing enterprise. None of them serve a large manufacturing industry in a large city. I got part of my information from talking with representatives of these lines and most of it from my own observation (Tr. 252). The Hillsboro & Northeastern is satisfied as long as the increase in divisions offsets per diem. I would not say these roads are typical (Tr. 253). It is impossible to get representative short lines, as I do not think there is any such thing (Tr. 254). The Marinette, Tomahawk & Western, the Omaha, Lincoln & Beatrice, the York Utilities, the Narragansett Pier, the Wyoming & Missouri [fol. 97] River, the White River, the Beaver, Meade & Englewood, the Waterville, the Fairchild & Northeastern, and the Ferdinand are not controlled by industries served by them. The Hillsboro & Northeastern, the Pacific Northwest Traction Company, the Big Sandy & Kentucky River,

the Ouachita & Northwestern, the Tabor & Northern, the Trinity Valley Southern, the Warren & Ouachita Valley, the Montana Western, the Leesville, Slagle & Eastern, and the Central Railway of Arkansas are controlled, to some extent at least, by industries which they serve. I do not know the ownership of the Androscoggin & Kennebec or Dansville & Mt. Morris or Stewartstown (Tr. 256-258). The demurrage basis I have referred to allows two days' Free time after 7 A. M., with a charge to the shipper of $2 a day for the next four days and $5 thereafter. A modification of that is the average agreement permitting a balance of debits and credits over and below the free time, at the end of the month. The CS-59 basis allows three days' Free time on a demurrage basis. (Tr. 258). The Birmingham Southern rules have been changed so much that I do not know just what they mean. Generally they are something of an average agreement. Under CS-59 ordinary detention is averaged, but when a car goes to $5 a day that cannot be offset. I think CS-59 allows one more day Free time than the average agreement demurrage plan (Tr. 259). The Birmingham Southern rules have been frequently modified, although I cannot see where it is a departure from the principles of CS-59 except in the amount of free time (Tr. 260).

J. J. Davitt was called as a witness and, being duly sworn, testified as follows:

I am general superintendent of the Lake Champlain & Moriah Railroad (Tr. 261).

Mr. Hitt: We offer the answer of this line to the questionnaire in evidence (Tr. 262).

[fol. 98] (Document is received in evidence and marked "Exhibit 1".)

The Witness: The Lake Champlain & Moriah has been held to be a common carrier. It is owned jointly in equal parts by two ore mining companies, is 7 miles in length and operates from Mineville to docks at Port Henry. Our general business is a small part of our total business (Tr. 265). We are on local tariff and collect our own charges which are an addition to the charges of the Delaware &

Hudson. Practically all the revenue the Lake Champlain & Moriah gets is from the rates which it charges to the ore companies, its owners, and it gets no advantage out of the joint rates. The Delaware & Hudson charges us straight per diem of $1 a day without Free time or reclaim. We think we should be treated as liberally as an industry under the demurrage plan. At Port Henry the Delaware & Hudson (Tr. 266) applies the demurrage rules of 48 hours free time to one of our proprietary owners which operates a blast furnace. Because the Lake Champlain & Moriah is a common carrier, the Delaware & Hudson refuses to give us Free time, although we feel we are entitled to it the same as any other industrial plant. It is less expensive for the Delaware & Hudson to interchange with us than to place cars at the blast furnace. We not only save them that expense, but we have to haul the cars a distance of 7 miles to the mines and then the miner must have time to load. Until recently we have billed the mines for the per diem which we paid (Tr. 267) but they now refuse to pay us and the Lake Champlain & Moriah has to pay. We have no tariff authority for the charge against the ore companies but make it because they are the owners of the railroad and the tonnage from these two companies is practically the only tonnage we have (Tr. 268). Requiring the Lake Champlain & Moriah to pay per diem has had the effect of making the industry pay the per diem. We would be willing to have the railroad placed upon a demurrage [fol. 99] basis even though that is not as liberal to us as the demurrage is to the blast furnace because in addition to the time allowed the mine to load, we have to haul the cars, place them, etc. (Tr. 269). If we were on that basis we could leave the mines on the same demurrage basis. We do not publish a demurrage tariff now. The new owner of one of the ore companies declines to pay per diem (Tr. 270). If we were put on a demurrage basis we would charge demurrage to the industries which would get two days' Free time, and if we could not get the cars back in two days' Free time we would go on straight per diem. We think we are entitled to three days' Free time so the shippers can use two days and give us one day for moving the car. Our loading goes into cars that would otherwise be hauled by the Delaware & Hudson empty, and we think that is an important consideration which should cause the Dela-

ware & Hudson to be very liberal to us in the matter of a Free time allowance (Tr. 271). The Delaware & Hudson also uses our tracks to store 50 or 60 empty cars on for as long as two months at a time. We render our service to our shippers without cost to the Delaware & Hudson which contributes nothing to the expense of originating and delivering the traffic to them (Tr. 272). The Delaware & Hudson has never paid for the use of our track for storing cars.

Cross Examination:

The mining companies on the railroad furnish practically all of the traffic (Tr. 273). It has been declared a common carrier by the Commission. Our revenue comes from local rates and our deficits could be avoided by increasing those rates. We have increased them now so high that the people that own the railroad complain that the rates are now too high (Tr. 274). The new interest that took over the interest of the old owner feels that rates should be reduced. We are trying to make the owning companies pay the per diem but the new concern refuses to pay. I do not see how we could assess demurrage against the owners because we receive the cars from the Delaware & Hudson and take them direct to the mines. We are making an average of four and five trips [fol. 100] per day, and we get the cars loaded; we haul empty cars on probably an average of two to two and a half days: The Delaware & Hudson gets all the tonnage delivered to them at Port Henry from us, without expense to it; they get all the haul out of it. (Tr. 2745). If we could make an arrangement with the Delaware & Hudson so that we would not have to pay per diem, the railroad and the owning interests could use Delaware & Hudson cars without paying for them. We should consider though that we are loading cars for them which would otherwise go back empty (Tr. 276). I think the Delaware & Hudson should allow us two days' Free time (Tr. 277). The answer to question 10 on Exhibit 1 is in error as we do no terminal switching. We collect our local rate from the mines that own the railroad for the services performed by us (Tr. 278). We only publish a tariff carrying rates between Port Henry and the mines. We formerly operated a barge line but it has been abandoned (Tr. 279). We do not use rail-

road cars for local service—just the mine cars (Tr. 280). In answer to question 9 on Exhibit 1, the intermediate service referred to was between the Delaware & Hudson and Mine Run. We would not be satisfied to become a party to joint tariffs with a division equal to our local rate, adding to it an amount to take care of car hire, as we would have the expense of maintaining the tariff (Tr. 281). I think free time is more simple and less expensive. I would approve of anything that would let us use Delaware & Hudson cars for nothing (Tr. 282).

WILLIAM M. B. LORD was called as a witness and, being duly sworn, testified as follows:

(Answer to questionnaire of York Utilities Company received as Exhibit No. 2.)

I am general manager of the York Utilities Company (Tr. 283). That line is primarily a street car and bus line in York County, Maine, but furnishes a freight service from a connection with the Boston & Maine at Sanford. The important freight service is the terminal service at Sanford and Kennebunk, where we also connect with the [fol. 101] Boston & Maine (Tr. 284).

(Map of York Utilities Company received in evidence as Exhibit No. 3).

In 1925 our gross revenues were $182,277.96, of which $26,599.84 was freight revenue. Our freight revenue comes entirely from local tariffs as we have no joint rates. What we charge the shipper for our service is in addition to the rate they have to pay to and from the junction point. The Boston & Maine gets its full rates on all traffic to industries on our line (Tr. 285). We do not subscribe to the per diem agreement but deal entirely with the Boston & Maine on car hire. Prior to July 1, 1922, I think we had a demurrage arrangement with two days' free time and at one time for a short period there was an average agreement. On that date we were told by the Boston & Maine that it was forced to put in straight per diem of $1 a day without reclaim or free time by the American Railway Association (Tr. 286). Such an arbitrary proposition was not acceptable to our company but we paid this charge, amounting to nearly

$14,000, for some 12 months. Since the road was reorganized on February 1, 1923, we have not paid the bills. The Boston & Maine at Springfield gets the same revenue for a car delivered on an interchange track and a car on the team track, but on the team track car it allows two days' free time, plus Sundays and other allowances. For the cars delivered to us $1 per day is charged (Tr. 287). The Boston & Maine gets just as much from us on a car delivered to us as they do on other cars such as I have just mentioned. I think we should get the same allowance that the men on the team track get. We should have three days' free time and per diem thereafter. Prior to 1923 we applied straight demurrage rules to our industries, but after that we included an additional dollar a day for each car to cover the per diem demanded of us by the Boston & Maine. This charge superseded the standard demurrage rules and while it is known as demurrage, it was largely an increase in rates (Tr. 288). The Boston & Maine makes more money on [fol. 102] traffic delivered to us than on traffic delivered on their own tracks because they are saved the expense of switching the cars and allowing free time to shippers and in addition they demand $1.00 per diem from us and we assume liability for all advances and collections of freight charges. At Kennebunk, Maine, inbound traffic to one company is delivered by us, while the outgoing traffic comes from the other side of the plant. The Boston & Maine gets the same rate in both cases (Tr. 289). We pick up the car and the Boston & Maine starts charging us per diem. They make more on the car we deliver than on the car they deliver. The Boston & Maine cars are used. I should say, the Boston & Maine receives about a quarter of a million dollars gross freight revenue from our traffic. 80% of the cars used are Boston & Maine cars (Tr. 290). Most of our traffic is passenger. Nearly all our freight business is terminal business, the length of the road being about 37 miles. We publish a tariff showing what we charge (Tr. 291). I think that lumber referred to in the answer to Question 9 of the Questionnaire, was in the cars which we originated in line-haul service. The terminal switching service we performed is mainly on traffic at Sanford. We take it at Sanford (Tr. 292) and deliver it to the Boston & Maine at their Sanford station, a haul of about a mile and a third.

We call that a terminal switching service. The industries right around Sanford is terminal service, and in Kennebunk anything on the Water Street siding is terminal service (Tr. 293). Practically all the business to or from the Boston & Maine originates within the switching limits of the junction point.

Cross-examination:

I think usage establishes our switching districts at Kennebunk and Sanford. I do not know whether our charges are paid as switching charges (Tr. 294). The amount of per diem we show on Exhibit 2 as paid in 1925 was not paid. It just accrued. The answers to questions 10 and 20 in Exhibit 2 do not agree (Tr. 295), because we add for each month the bills the Boston & Maine keep sending us, so that in 1925 accounts we have 11 months in 1925 and one month in 1924. [fol. 103] What I show as amounts received for car hire are amounts received from our new demurrage charge which we increased by adding the per diem rate to it (Tr. 296). We have no interchangeable equipment and these amounts are demurrage receipts. The demurrage we show as having accrued is the income from the dollar a day tariff which is collected from shippers or consignees without free time (Tr. 297). It is published in the tariff and the charge is computed the same as the per diem arrangement. We are charging a rate to the consignees and shippers based upon weight and time limit, and we are willing to pay the Boston & Maine a fair amount commensurate with the treatment they give other industries (Tr. 298). We collect from the consignees a dollar a day as a part of our rate because we use Boston & Maine cars, but we have not paid the Boston & Maine, although we paid something in December and something a week ago. The subject of car hire is under discussion between us now: They claim we owe them a balance and we claim they owe us a balance (Tr. 299). I think we should have the use of cars without pay, or some other equivalent, for performing terminal service for the Boston & Maine (Tr. 301). We are asking the Commission to allow us 3 days' free time to perform this service for the Boston & Maine with per diem thereafter. I have not looked it up to see whether or not I could get what I want as a reclaim if I joined the American Railway Association. It was the

belief of the Company that it would not be satisfactory (Tr. 302).

W. E. SMITH was called as a witness and, being duly sworn, testified as follows:

I am auditor and superintendent of car service of the Coudersport & Port Alleghany Railroad at Coudersport, Pennsylvania. We have been a subscriber for a number of years only in order to get reclaims, but we feel that the cost of car hire on a per diem basis as compared to our proportion of the through rate is inequitable. We want in this case to be given an opportunity to save something on car hire and settle it with our direct connections, eliminating the necessity of making individual settlements with railroads in all sections of the country (Tr. 303). We also [fol. 104] wish to receive reclaims. I think if our connections would give us the National Car Demurrage Rules, it would be more equitable than the present arrangement. We have made a study of inbound traffic which shows that for the month of January, 1927, we received 23% of the revenue on joint traffic and pay 30% of the car hire while our connections received 77% of the joint revenue and paid 70% of the car hire. This is the paper presented to me (Tr. 304).

(Document received in evidence, marked Exhibit No. 4).

We were unable to make such a study of outbound traffic as we do not know when the cars reached destinations. The demurrage basis of car hire would not make a very great difference to us, but we estimate that we would not escape having to pay substantial amounts in car hire, but if we could use the argument with shippers to hasten the loading and unloading of cars and not take the full 48 hours free time allowed them, it would work to our advantage and promote greater car efficiency (Tr. 305). In the study we made, we found that per diem expense was $589, whereas on a demurrage basis, exclusive of Sundays, it would have been $375. We also have certain operating costs which are chargeable to per diem which are not reflected in the figures shown.

(Comparative car hire study offered and received as Exhibit No. 5.) (Tr. 306.)

The Coudersport & Port Alleghany connects with the Pennsylvania at Port Allgehany, and runs to Newfield Junction, Pennsylvania, where it connects with the Buffalo & Susquehanna, distance of 32 miles.

Cross-examination.

We publish a class rate tariff and those rates are charged in addition to the Trunk line rates where we have no through rates. We do have joint through rates to a number of points (Tr. 307). We have practically no overhead service from the Pennsylvania to the Buffalo & Susquehanna. We are probably shown as participating carrier in trunk line tariffs. On Exhibit 4 we determine the amount of per diem which accrued on connecting lines by taking the way bill date, adding two days, and substracting that from the date of interchange with our line (Tr. 308). I would not [fol. 105] call that an estimate, as ordinarily the trunk line would not consume more than 2 days to load a car. Sometimes it takes longer and sometimes less (Tr. 309). We made no investigations on these particular cars to determine the time, and if we made an error the percentages are wrong (Tr. 310). If the shipper held the car longer than two days he would have to pay demurrage, which would more than offset the per diem. The statement of time on our line includes the delivery back to the trunk line when the car is delivered back empty, but if the car was loaded back the time would only be computed to the date on which it was released. We have not made a statement for the outbound traffic as we do not know when the cars are released (Tr. 311). On the inbound traffic, if the loading line had to get an empty car which it took a day or less to place the load, our record does not take into consideration that day or more, whatever it happened to be most. Most of the cars on Exhibit 4 were handled on divisions of through rates (Tr. 312). We receive a reclaim on terminal switching performed at Port Alleghany. We do not ask for reclaim on traffic such as the 100 cars on Exhibit 4. We want a straight demurrage basis (Tr. 313). We would then have a straight demurrage basis upon all traffic except terminal switching and on it we would have reclaim. We want to settle per diem direct with connections because it saves some money and simplifies accounting. We want 3 days' free time on cars delivered to us in line haul service

under joint through rates because our proportion of the revenue (Tr. 314) is less than our proportion of the per diem which we pay. That is not necessarily a matter of divisions. If we earned more money we could continue under the present plan and be in the same relative position as if we had free time (Tr. 315). If we received the privileges we want we would probably continue to be a subscriber but instead of paying per diem we would settle on a demurrage basis. I made no investigation to see what demurrage accrued on the 100 cars in Exhibit 4, but we collected about $60 demurrage that month (Tr. 316). We apply the standard demurrage rules. If we settled with our direct connections on car hire and received a car from [fol. 106] the Pennsylvania and delivered it to the Buffalo & Susquehanna, I understand the Buffalo & Susquehanna would notify the car owner. We would not make a report to the car owner (Tr. 317). The Pennsylvania, in order to assess us demurrage, would subtract the date on which we received the car from the date we delivered it to the Buffalo & Susquehanna, and the Pennsylvania would get that date from the Buffalo & Susquehanna. It would take us approximately 24 hours to haul a car from the Pennsylvania to the Buffalo & Susquehanna (Tr. 318). We have practically no loaded movements of this sort (Tr. 319).

H. P. Crowell was called as a witness and, being duly sworn, testified as follows:

I am general manager of the Belfast & Moosehead Lake Railroad, at Belfast, Maine, and have furnished an answer to the questionnaire (Tr. 324).

(Said document was marked as Exhibit No. 6 for identification.)

The railroad extends from Belfast to Burlington Junction, Maine, a distance of 33 miles. The city of Belfast, Maine, owns 75% of the stock. Up until January 2, 1926, the road was operated by the Maine Central. The Maine Central claimed it was losing money at the rate of at least $40,000 a year and exercised their option to terminate the lease on January 2, 1926. It then became necessary to create an organization to operate the property, as the City

of Belfast and entire Waldo County are dependent upon it for transportation (Tr. 325). We became a subscriber to the per diem rules agreement of the American Railway Association, and pay straight per diem. We do a little switching at Burlington and last year collected some $73.00 reclaim. In 1926 our gross freight revenue was $102,458.02 and our per diem payments were $16,713.25, in other words our car hire cost was over 15% of our gross freight revenue. We are now controlling our expenses so that we break even, but we feel it would not be unreasonable to ask that the Maine Central should treat us as it treats an industry on its line (Tr. 326). They should apply the National [fol. 107] Car Demurrage Rules with 2 days' free time for loads in and out, with the average provision. That would help us to keep the railroad going and building it up for the people of Belfast and Waldo County and also would put a premium upon prompt loading and unloading. We think we could keep after the shippers so that they will use a minimum of time in releasing cars so that we can get them back to the Maine Central before demurrage accrues against us. We think they on account of their interest in keeping the railroad going will go to extreme lengths to help us to succeed in this way. As a subscriber, we now settle with car owners direct (Tr. 327). 60% or more of the cars we use are owned by the Maine Central and the rest are of miscellaneous ownership. It would save us considerable if we could settle direct with the Maine Central and not have to keep accounts and settle with all of the several hundred subscriber railroads throughout the United States, Canada and Mexico (Tr. 328). We have only one railroad connection.

Mr. Hitt: I want to withdraw the offer of this questionnaire, and let the testimony stand as given.

The Witness: We have only one railroad connection.

Cross-examination:

We have no freight cars of our own, and our service is mostly line haul service. We want the demurrage arrangement applied to our line haul service (Tr. 329). We get a share of the Maine Central's divisions of through rates and adopted the tariffs when we took the road over. I do not know what the relationship between revenue and car

hire expense is on the Maine Central and do not know whether or not it is in worse financial condition than our road (Tr. 330).

STEPHEN D. RICE was called as a witness and, being duly sworn, testified as follows:

I am traffic manager of the Arcade & Attica Railroad Corporation. We have furnished an answer to the questionnaire.

(Document marked Exhibit 6 for identification.)

The railroad operates 28.36 miles from Arcade, New York, where it connects with the Pennsylvania, to Attica, New York, where it connects with the Erie direct and the New York Central through a switching arrangement with the Erie (Tr. 331). It is a subscriber railroad and gets [fol. 108] very little switching reclaim at the Erie end of the operation. The country served is predominantly agricultural, and the farmers and merchants of the section are interested because it is the only railroad serving them; some of them are isolated 15 miles. Then years ago it was out of commission for three months. It has been operating under various names since 1871 (Tr. 332). The road was purchased at forced sale from the old corporation by the people along the line for $77,000. It was in a very bad condition, the rails were very poor, the ties had all to be retied, and culverts and everything were out of order, so there has been constant reconstruction ever since we had it. Our financial condition has been critical at all times. When we first took the road over we had $95,000 in stock and $35,000 in bonds. We paid out $77,000 for the road and had to have a little money to buy engines and other materials to use. The road is still owned by the citizens. There are about 358 stockholders; the largest one is $10,000. We adopted all the rates of the old company (Tr. 333), and they have had through blanketed rates with practically every road in the country, so that our people have the same rates as apply to the junctions on the trunk lines, and the connecting lines shrunk their earnings to give us what they thought was a fair division. It would not be practicable to add anything to the local rates at a differential above the junc-

tion point rates, but it would increase the rates to these people along the line so that they would be out of the market. There are a lot of large markets within a short distance of Arcade and Attica, at points in Buffalo, so that if we increase the rate and put them on an arbitrary over the Attica or Arcade rate, the people in between would be out of the market and there would be a discrimination which they could not stand. The trucking situation is also very serious, as much traffic is handled by trucks from Rochester and Buffalo (Tr. 334). If our rates were made higher by 2 or 3 cents or more than the junction point rates, the trucking would be encouraged. That is one of the reasons why it is necessary for us to have blanketed rates. We are asking [fol. 109] for a car hire arrangement substantially the same as the Birmingham Southern basis, or if we were given two days' free time we would pay per diem thereafter. We pay approximately 14% of the car hire on joint business, and our percentage of the earnings is 18½% (Tr. 335). I mean by that that per diem is 14% of our earnings.

(Exhibit No. 6 for identification received in evidence as Exhibit No. 6.)

(Summary exhibit received as Exhibit No. 7.) (Tr. 336.)

Our proportion of the per diem expense which accrues on these hauls is 28.2% to the total instead of 14.1%, and our earnings on the same traffic are 19.6% (Tr. 337). I want to thus qualify the statement which I made a while ago. I have another exhibit which shows that it would have cost us under different bases of per diem. On 121 cars per diem would have cost us $446; per diem with two days' free time, $159; straight demurrage $324; mileage at 1½¢, $60.75, mileage at 2¢ a mile, $81.

(Document received in evidence as Exhibit No. 8) (Tr. 338).

I have another exhibit showing the percentage of system and foreign cars coming onto our line and going out. 52.6% of the cars we used belonged to the railroads with which we connect.

(Document received in evidence as Exhibit No. 9.)

Under our present arrangements we are showing a profit on book value of about $206,000. If we use the Commis-

sion's valuation of over $600,000, we could not get anywhere at all (Tr. 339). I am the only officer who gets a salary ($150.00 per month), but I do not spend all my time with the railroad. The basis of our claim for free time or reclaim time is that we pay a higher proportion of the car hire expense on joint traffic than the revenue we derive.

Cross-examination:

An increase in our revenue would be satisfactory to us, but we do not seem to be able to increase it. We want either more percentage of the through rate or free time to offset it (Tr. 340). As a net result, what we want is more money, whether we get it in reduction of costs or increase [fol. 110] of revenue. I have been to both connecting lines a good many times, and we have figured out every percentage that we can, and tried to fix it so we could get a little more money, and in some cases we have, and in other cases we are still under argument as to what a proper division should be. So we still have pending some effort to get more money. Exhibit No. 9 merely goes to the number of home cars delivered to us by the Erie and Pennsylvania as compared with the number of foreign cars, and simply shows how the cars come in (Tr. 341). On Exhibit No. 7 we computed per diem accruals on foreign lines by subtracting two days for the supposed two days' allowance at the beginning of the haul for loading the car. On some cars there may not have been any per diem. It is not actually accurate but we think it is a fair way to get at it. It is an estimated basis but a fair comparison. The per diem on our line on the inbound business is computed by the actual time we had the car from the time it is turned over at the interchange until we turn it back or it is released for another load. These represent the days on our line that we actually paid per diem for (Tr. 342). We are associate members of the American Railway Association. Our average per diem (detention) for last year I think was 2.75 (Tr. 343). The figure in answer to question 20 of Exhibit No. 6 I think is the gross freight revenue after taking out passenger, baggage and various other revenue (Tr. 344). I am not sure if it excludes our local revenue.

Mr. Hitt: Mr. Seward tells me that local revenue was deducted and that figure represents simply the interline joint freight revenue with switching revenue included.

The Witness: Our switching business is a small part of the whole (Tr. 345). We do not interchange our equipment as we have only enough for our local needs, that is it does not quite take care of it. We did allow one car to go [fol. 111] off, and the per diem I show on Exhibit 6 as being received was on that car (Tr. 346). If we do not have equipment for our own local needs we use foreign line equipment in local service; the connecting lines are very glad to furnish their equipment in order to get the business. I want the average agreement to apply to those cars. We would have to apply it according to the rules (Tr. 347). I do not know just how; we would have to have a special arrangement with the connecting lines to furnish us on lease any cars required in local service, or buy a few more cars. By the time cars were unloaded we would not have much time left to use them in local service, and if we used foreign cars for that service we would have to have a modification of the modification I am proposing (Tr. 348).

Mr. Hitt: This is all of the general witnesses that the American Short Line Railroad Association will put on at this time (Tr. 348).

C. W. Crawford was called as a witness and, being duly sworn, testified as follows:

I am Chairman of the General Committee of the Transportation Division of the American Railway Association and have been for 8 years. I have been in railroad service for 27 years. The Transportation Division has jurisdiction over the rules of the Association (Tr. 349) with respect to the handling of cars, settlement for their use, demurrage and storage, and matters pertaining to car efficiency. The object of the Association is to harmonize and coordinate the principles and practices of American railroads with respect to their construction, maintenance and operation, through recommendation. The work of the Transportation Division is handled through several com-

mittees (Tr. 350). The General Committee is composed of representatives of the Southern, Erie, Missouri Pacific, Canadian National, Reading, Milwaukee, Great Northern, New York Central, Central of Georgia, Boston & Maine, Pennsylvania and Southern Pacific. The per diem rules [fol. 112] arbitration committee consists of myself and representatives of the Southern, Erie, Boston & Maine and Pennsylvania. The Committee on Car Service is made up of representatives of (Tr. 351) the Delaware & Hudson, Seaboard Air Line, Milwaukee, Missouri-Kansas-Texas, Baltimore & Ohio, Frisco, New Haven, L. & N., Northern Pacific, A. B. & C., Canadian National, Pennsylvania, Southern Pacific (Tr. 352) and Union Pacific. The Committee on Records or Accounting is made up of representatives of the Canadian Pacific, Boston & Maine, Atlantic Coast Line, Burlington, Big Four, Pennsylvania, Santa Fe, Southern, Union Pacific and Missouri Pacific. We also have in the Transportation Division committees on demurrage, freight handling and railroad business mail (Tr. 353). Changes in the per diem rules are considered by the Committees on Car Service and Records, and recommendations go to the General Committee and if approved then go to the directors for submission to the members of the Association on letter ballot. To be effective rules must be approved by a majority of the members representing two-thirds of the freight cars owned and controlled. The committees have for years given close attention to economical and efficient methods for handling and settling for freight cars. Every member of the Committee is free to advocate any views they have and the action of the Association has always been by a majority rule, the effort being to best meet the various conditions in the country and promote the greatest efficiency and economy, and provide rules fair to owners and users of cars under a plan that will give correct car accounts without sacrifice of simplicity in accounting (Tr. 354). The present rules represent the experienced judgment of those in direct charge of the operation of individual railroads. Approximately 2,600,000 freight cars provided by the railroads move freely over 300,000 miles of railroad in North America. They are inter- [fol. 113] changed between railroads under what is known as the Car Service and Per Diem Agreement, which originally became effective July 1, 1920, and provided that the

interchange should take place subject to the Code of Per Diem Rules as adopted by the Association. Prior to then cars were interchanged on a mileage basis which proved to be unsatisfactory for various reasons, because there was no check against the accounts as rendered by foreign lines, no incentive to handle and return foreign cars promptly, and the compensation was not uniform or sufficient to reimburse the car owner. The per diem rules have been changed from time to time, every change representing an improvement based upon experience in the actual operation of the rules (Tr. 355). The rules are enforced between railroads by the per diem agreement. (Said rules and agreement received in evidence as Exhibit No. 10.) The per diem rules are based upon reciprocity but are based on a theory that a proper division of car ownership would distribute the benefits and burdens of railroads equally, but such a division of ownership does not obtain. Car owners must receive for the use of their cars enough to cover the cost of ownership. The per diem rate is not intended to yield a profit; it is merely equivalent to ownership costs which the using road would have to bear if it owned the cars. The car owner incurs these costs and should be reimbursed by a user. 1400 railroads owning 2,607,708 freight cars subscribe to the per diem agreement (Tr. 356). These roads own more than 99% of the cars in North America and operate more than 98% of the mileage.

(List of subscribers to the Per Diem Agreement received as Exhibit No. 11; it is reproduced at the conclusion of this narrative of evidence.)

Any railroad may become a subscriber to the car service per diem agreement if recommended by the General Committee of the Transportation Division and approved by the Board of Directors, if of standard gauge and if it connects with other roads regularly incorporated, and performs a [fol. 114] general freight business as a common carrier (Tr. 357) with regularly published tariffs. It must become a member or associate member of the American Railway Association, the Bureau for the Safe Transportation of Explosives, a party to the Interchange Agreement, and must put in force the National Car Demurrage Rules. Its application must be endorsed by two-thirds of its subscriber connections. Settlement with nonsubscribers has

been a source of controversy. In the 1902 rules it was provided that if a subscriber delivered a foreign car to a nonsubscriber, without the consent of the owner, it would be responsible to the owner for per diem accruing on the car while on such road. On January 1, 1914 the rule was changed to provide that in such a case the subscriber delivering the car to the nonsubscriber (Tr. 358) should pay the per diem to the owner, and that the owner would accept settlement only from the delivering subscriber who must make settlement with the nonsubscriber. This permitted agreements between subscriber roads and their nonsubscriber connections, which proved unsatisfactory. Some short lines more favorably situated demanded and received more liberal concessions than others and settlements were not uniform. There was no incentive for roads to subscribe to the agreement. On the contrary, the rule offered an incentive for some roads to withdraw from the agreement and thus disrupted the uniformity which the Association sought to establish. In May, 1915, the Association adopted a resolution (Tr. 359) in which it was recommended that since certain subscriber roads were accepting settlement from nonsubscribers on a mileage basis, and such arrangements might be used to influence traffic to the detriment of other subscribers, it was recommended that subscribers delivering cars to nonsubscribers should collect an amount not less than the prevailing per diem from nonsubscribers without reclaim. This resolution was not effective to correct the discriminatory practices because it [fol. 115] was only a recommendation. Therefore, on March 1, 1920, Per Diem Rule 6 was adopted, imposing liability for per diem upon a subscriber delivering a car to a nonsubscriber; the car owner accepting settlement from the delivering subscriber (Tr. 360) and requiring the delivering subscriber to make settlement with the nonsubscriber at the per diem rate without free time or reclaim. The delivering subscriber was, therefore, responsible to the car owner for per diem accruing while the car was in the possession of the nonsubscriber, and the nonsubscriber was required to pay per diem to its direct subscriber connection. The rule was based upon the principle that the user of a car should pay for its use at the same rate that other roads paid. The Association issued a circular to ascertain the present basis of settlement between subscribers and

nonsubscribers (Tr. 361). (Said document was received in evidence as Exhibit No. 12.) This exhibit refers to steam railroads.

Mr. Towner: I next offer a similar statement relating to electric lines.

(Said document was received in evidence as Exhibit No. 13.) (Tr. 362.)

Mr. Towner: I offer another statement as Exhibit 14, which is a summary of the preceding exhibits.

(Said document was received in evidence as Exhibit No. 14.) (Tr. 363.)

The Witness: All Class I railroads and most Class II railroads are subscribers. Most of the nonsubscribers are Class III roads. Out of 424 nonsubscriber steam roads, the exceptions to per diem Rule 6 are confined to 97 railroads, 44 who settle with direct connections on a per diem basis with free time, and 53 who settle with direct connections upon a demurrage basis of two days' free time (Tr. 364). The figure "624", the number of nonsubscribers, should be "619".

[fol. 116] The Witness: I suggest that we withdraw this summary and correct it.

Director Bartel: It will retain the number. Resubmit the corrected copy as 14 (Tr. 365).

The Witness: Of the electric lines, the exceptions to Per Diem Rule 6 are confined to 26 roads out of 127 nonsubscribers; 7 of these settle with direct connections at the per diem rate without free time, and 19 settle on a demurrage basis with 2 days free time. Out of a total of 651 nonsubscribers, the exceptions to the rules of the Association apply to only 123 railroads. These exceptions are being constantly used by other short lines in support of demand for free time or other allowances, and indicate the necessity for a uniform application of Per Diem Rule 6 against all nonsubscriber roads (Tr. 366). I think there is a discrimination where we have different treatment of different short lines. I do not understand that as between subscribers there is any basis other than per diem (Tr. 367). I said that it is my opinion that these exceptions to Per Diem Rule 6 shown in these exhibits resulted in discriminatory practices (Tr. 368).

Car hire settlements with industrial switching roads have been before the Commission for a number of years. Prior to the decision in 1914 in the First Industrial Railways Case, 29 I. C. C. 212, in which the Commission held that a delivery of a car by a carrier upon the interchange track was a delivery to the industry itself, a number of industrial switching roads were subscribers. They were afterwards suspended from the Per Diem Agreement, and delivery to them was considered a delivery to the consignee and demurrage was charged against the consignee by the trunk line, on the theory that the terminal road was agent of the consignee. The delivering line assumed and paid the per diem charges (Tr. 369), but the industries refused to pay the demurrage charges. In November, 1914, the Commission in 32 I. C. C. [fol. 117] 129, modified its original report and permitted car hire arrangements by trunk lines with industrial roads which were common carriers for a reasonable compensation for the transportation service they performed. In 34 I. C. C., 596, principles were announced under which arrangements might be made between trunk lines and industrial roads for interchange (Tr. 370). They were required to be filed with the Commission and could not be made indiscriminately, and must specify basis of rates and of allowances and divisions. Thereafter the industrial switching roads declared to be common carriers were restored to membership in the per diem agreement, and checks were made by the Association of the car records of those roads to determine the actual time required in handling cars in terminal service: this to be used in fixing per diem reclaim allowance. The Commission has been advised of the reclaim arrangement in each instance, and since 1914 has been informed of what reclaims were allowed industrial common carrier switching railroads, the manner in which it was ascertained, and the action taken by the trunk lines to see that reclaim was fixed in accordance with the rules (Tr. 371).

(Statement of reclaims to industrial switching lines received in evidence as Exhibit No. 15.)

When a line performs switching service within switching limits for a road haul carrier, both mileage and per diem rules always made provision for non-payment of car hire by the switching line, while cars were engaged in such service. Under the mileage system no mileage was paid on cars

handled in switching service. The per diem plan provides for a reclaim when a switching line pays per diem. The only issue that has ever existed with respect to car hire on switching lines is the amount of reclaim to be allowed when the switching line has paid per diem to the owner, and the manner in which the reclaim is to be determined. Switching [fol. 118] charges are based theoretically on cost of operation not including car hire (Tr. 372). No reclaim of mileage paid on tank cars is made by a switching line as an intermediate carrier, but in only a few instances do the intermediate switching lines pay any mileage. In a great many cases where the intermediate carrier does not pay it, the trunk lines compute mileage up to a given point within a terminal, so that there is not in reality any deduction of mileage (Tr. 373). The intermediate lines in Chicago do not pay mileage on tank cars through that district except that the Indiana Harbor Belt, and the Belt Railway, do. When it is handled by other carriers who do not pay mileage, both of the road haul carriers assume this charge through their methods of computing that mileage. For example, if a car moves from Kansas City to Buffalo over the Burlington and the New York Central, if the Belt Railway or the Indiana Harbor Belt did not pay the intermediate mileage, I think the Burlington should pay mileage up to their Chicago station, instead of cutting off where they deliver it. Where they pay to Chicago and the New York Central pays Chicago to Buffalo, the car owner gets full mileage from Kansas City to Buffalo and avoids this method of trying to compute mileage through switching districts, or reclaims, or anything in connection with it (Tr. 374). The intermediate switching roads at Chicago are allowed one day reclaim on intermediate switching (Tr. 375). It is not practicable to readjust switching charges to include car hire. It was first proposed to grant free time to switching roads, but this was rejected because it would complicate car accounting and the variation in time required for switching, even on different switching [fol. 119] lines in the same territory. Furthermore, it would remove the incentive for prompt movement of cars by switching lines. After careful consideration, it was decided to establish the reclaim plan under which the switching line could reclaim the per diem paid by it to the car owner from the receiving or delivering trunk line for which the switching was performed. The amount reclaimed is an arbitrary

amount for each car, based upon the average number of days actually required in the switching and determined by the roads interested in each territory. Under this plan the incentive for prompt movement continues, per diem is reported to the car owner, and correct car accounts are kept with no hardship upon the switching line (Tr. 376). In July, 1916, at 41 I. C. C. 68, the Commission held that the Per Diem Agreement was not a proper basis for car hire settlement with industrial common carrier switching roads and established a modified demurrage arrangement, in lieu thereof. Following this decision, the Railroad Administration issued Circular CS-59, showing the basis of settlement for passenger and freight hire accounts.

(Said document was received in evidence as Exhibit No. 16; it is reproduced at the conclusion of this narrative of evidence.)

Appendix C, on page 4 of Exhibit No. 16, contains rules governing charges for detention of freight cars by industrial common carriers, apparently based on the principles laid down by the Commission in the Northampton & Bath Case. In 1921, the Commission decided the Birmingham Southern Case, 61 I. C. C. 551, establishing the rules in Circular CS-59 as a proper basis of settlement by an industrial switching road (Tr. 377) for the use and detention of foreign cars. Subsequently similar rules were established for a number of other railroads. In some of these cases the reclaim arrangement was condemned. Swtiching roads [fol. 120] generally perform four kinds of switching service; terminal switching (Tr. 378) which is handling the car for loading, unloading or reconsignment, the service being within designated switching limits and the switching road not participating in the freight rate; intermediate switching which is the handling by an intermediate switching road in switching of loads from one road to another road within designated switchng limits; inter-terminal switching service which is the handling of a car loaded on one road within switching limits to another road in the same switching limits for unloading or reshipping; and local switching service which is handling a car loaded within switching limits on one road for unloading on the same road in the same switching limits. The rules permit reclaim of

per diem paid on cars handled in terminal switching service and reclaim of one day's per diem on intermediate switching service (Tr. 379) if per diem accrues, because one day is the maximum time that should be required to perform intermediate switching. No reclaim is allowed on inter-terminal switching service or local switching service, because it is performed by the switching line for its own account. The arbitrary reclaim allowed a switching line was formerly determined by agreement between the roads concerned, but this was unsatisfactory because when a reclaim was once established it was difficult to get it changed and it therefore did not reflect the actual average time required by switching line for the service. The code of switching reclaim rules was therefore adopted by the American Railway Association in 1923 and are made a part of Per Diem Rule 5. They provide a uniform method for determining reclaim [fol. 121] which is to be fixed at the actual average time required by the switching line, the checks to be made annually and to include seasonal months. The only cars included in the check are those upon which reclaim is made (Tr. 380). Cars used in local service, handled in inter-terminal service, and cars loaded with company material are excluded, and on these cars the switching car pays per diem without reclaim. The features criticized by the Commission have been met by changes in the switching reclaim rules that are shown in Exhibit No. 10. The criticisms I refer to were those made in the Birmingham Southern and Northampton & Bath Cases and other cases, in which the Birmingham Southern rules were established (Tr. 381). The industrial switching roads subscribing to the per diem rules have been admitted to the Agreement upon the understanding that their reclaims will be fixed in accordance with the reclaim rules. Reclaim under the present rules does not give a profit to industrial switching roads or to their controlling industries. It only makes a switching road whole on the per diem paid by it on cars switched for road haul carriers. Under the per diem rules, industrial switching roads are required to pay per diem without reclaim on cars used in local switching service, while under the Birmingham Southern rules they are permitted to use these cars free of charge. The Birmingham Southern rules also permit such roads to use cars free in inter-mill switching service (Tr. 382). That is the effect of those rules. I do not

think there is anything in the Commission's decision which approves this but that is the way it works out. Every railroad should either own enough cars to handle its own local business or should pay per diem on other cars (Tr. 383). [fol. 122] The car owner bears the cost of ownership in the first instance and should be reimbursed by the road using those cars for the handling of traffic for which the car owner is in no way obligated to furnish the equipment. In times of car shortage, a car owner can earn more by transporting shipments in its cars than it can through the per diem charge of $1 a day and requiring them to furnish their cars to be used in local service or inter-terminal switching service, without compensation, relieves the industrial roads of any obligation to furnish their own equipment (Tr. 384). The reclaim rules allow no reclaim on intra-terminal switching, so the Birmingham Southern rules give free time which industrial roads did not have under the reclaim basis. For example in Chicago, the Northwestern and Burlington must each pay per diem on a car originating on the Northwestern, delivered inter-terminally to a point on the Burlington. If the car is delivered to the Pullman, however, the Northwestern pays per diem while the Pullman has the car, but the Pullman has four days' free time (Tr. 385). There is a difference in inter-terminal service between two trunk lines and between a trunk line and an industrial road not on the per diem basis (Tr. 386). In its decision at 78 I. C. C. 475, the Commission also enable certain industrial roads to collect per diem on their own cars while permitting them to use foreign cars without paying anything for their use (Tr. 387). This gives the industrial roads a distinct advantage. The Bay Terminal Railroad is one case that I had in mind. The Illinois Northern also has cars and there are other [fol. 123] switching roads on the Birmingham Southern basis which own cars. The effect of the Commission's finding was to put the tank cars of the Bay Terminal on per diem, while most of the other tank cars are on a mileage basis (Tr. 388). If the Illinois Northern was a subscriber they would get per diem on their cars and their reclaim would be calculated to absorb the per diem they paid on cars in terminal switching service (Tr. 389). There would be no great difference in the net result between operations under the reclaim plan and operations under the Birmingham Southern 4 day plan, if consideration was confined to

strictly terminal switching service, but even on that basis there would be some difference, as under the Birmingham Southern rules credits are applied against debits. Reclaim is based on an actual average, but the Birmingham Southern rules are not based on an average (Tr. 390). The average agreement under the Birmingham Southern rules applies much the same as the demurrage average agreement. Credits can be used to offset debits. A car might be held 8 days (Tr. 391) without any charge if there were credits to offset the debits. Under the reclaim rules the maximum average time is 5 days, and in arriving at the average time any detention over 8 days is eliminated (Tr. 392). Detention, however, is only computed on cars used in terminal switching service. Cars used in local service and inter-terminal and intra-plant service are excluded in making the checks under straight per diem. The Birmingham Southern rules make an average free time allowance which is increased by the use of credits in offsetting debits, making it possible to use a car 16 days exclusive of Sundays and holidays without payment. Under the per diem plan [fol. 124] an industrial road is required to make payment for every day including Sundays and holidays, the only reclaim allowed being for the average number of days required in handling cars in terminal switching service subject to a maximum of 5 days (Tr. 393). In some cases the Birmingham Southern rules allow more free time than is necessary for handling cars. The extended periods of free time do not create an incentive for prompt disposal of equipment and to a great extent because of the application of such free time allowance on an average basis, cars are frequently delayed to serve the convenience of the industry without penalty. The per diem basis with reclaim produces prompt handling because of the penalty for all delay in excess of the period for which reclaim is allowed. The reclaims do not equal the allowances under the Birmingham Southern rules (Tr. 394). Reclaims are revised periodically based upon actual performance and the plan which produces the greatest economy and efficiency in handling cars, provided the practices are fair and equitable to all parties concerned, should govern. The per diem rules also provide uniform simplified accounting, which is important as otherwise there are many disputes. The Birmingham Southern rules require the use of intricate and elaborate

records to determine the indebtedness of industrial switching lines (Tr. 395). The records indicate that the charges collected under the Birmingham Southern Rules are hardly sufficient to pay additional accounting expense, to say nothing of compensation. Car service rule 6, which is part of the per diem rules, governs delivery of cars, and per diem rules 15 and 16 define responsibility of the receiving road in case of embargoes or refusal to accept cars. These matters are not covered by the Birmingham Southern rules. [fol. 1251] Roads which participate in joint through rates are required to pay per diem without reclaim under the per diem rules, but the Birmingham Southern rules do not require this (Tr. 396). The experience gained under the Birmingham Southern Rules shows that they have not accomplished the purpose for which intended but give greater advantage to industries on industrial roads; they give more free time to industrial roads in using foreign cars than the per diem rules; they do not produce efficiency or economy in car handling; they require expensive car accounting; they are contrary to established practices governing interchange in use of freight cars (Tr. 397) and operate unjust to the Trunk line carriers.

Cross-examination:

At the time the resolution was passed in 1915, I think that present Rule 6 was in Per Diem Rule 5 (Tr. 398). It referred to settlements with nonsubscribers. There was no change in Per Diem Rule 5 in 1915. In January, 1914 the rule was amended so that reclaim on intermediate switching was eliminated (Tr. 399). The first change in the interterminal switching rule was effective March 1, 1923. The rules have not always provided for no reclaim on interterminal switching. It has been some years since reclaim has been allowed on intra-terminal switching, but I do not know when the change took place (Tr. 400). Rule 5 is mandatory upon all subscribers in some respects, but the reclaim rules are subject to changes to meet local or special conditions (Tr. 401). I think Per Diem Rule 5 is being observed by subscribers, and I wanted to point out that the reclaim rules are subject to such changes as may be necessary to meet special or local conditions. It is hard to apply the reclaim rule without such flexibility to take care of local or peculiar conditions (Tr. 402). I refer particularly to

relations between subscribers. That does not apply be-
[fol. 126] tween member roads and non-subscribers. An industrial switching road subscriber could get a modification of Rule 5 if justified by a local operating condition and agreed to by its connections (Tr. 403). The industrial switching roads which are admitted to the per diem agreement are admitted with the understanding that their reclaim will be determined by a check by the Association. The qualification in paragraph A of Rule 8 by the words "or otherwise as may be agreed upon between the roads interested" does not apply and has not been applied in connection with the applications of the industrial switching roads, to membership in the per diem agreement. These roads are not admitted to the agreement unless the Association makes the check, and such roads would be prevented from making an agreement with their connections as to the method of check under this rule (Tr. 404). That is the understanding upon which they are admitted. The rule provides for a basis agreed upon between the roads interested but industrial roads are only admitted upon the other understanding. The reason for the distinction between industrial and other roads was to prevent allowing a profit out of reclaim to an industrial switching road, which the Commission had found to be possible (Tr. 405). We do not insist that a switching road not industrially controlled be checked by the Association. This is only done on industrial roads and the Commission is advised what the arrangement is. The latter part of Rule 8-a would not apply to these roads, that is, "or otherwise as may be agreed upon between the roads interested", although the exception does not appear in the code (Tr. 406). The mileage shown on Exhibit 11 is total track mileage shown in reports to the Commission. It is reported to the Commission under the term "Miles of Road Operated" (Tr. 407). The same thing is true with respect to the mileage of electric lines. I
[fol. 127] understand all cars shown on Exhibit 11 are interchangeable, as the information was taken from the official Railway Equipment Register. I do not know if there are local agreements under the flexible provisions of the Per Diem Code between the different carriers shown on Exhibit 11. On Exhibit 12, sheet 11, there is shown an entry under free time allowed, column L. & N. cars, actual time. That means the Artemus-Jellico Railroad pays per diem on

all cars except L. & N. cars (Tr. 408), and on those cars it is allowed free the number of days those cars are on its railroad. On the same exhibit the Verde Tunnel & Smelter Railroad escapes per diem. The Christie & Eastern pays per diem to its connections but is allowed a reclaim. The answer that we received on which this exhibit was compiled did not show the amount of the reclaim allowed. I cannot say how much reclaim. I do not know whether that is the same as the roads where I have shown "actual" or whether they do actually pay some per diem (Tr. 409). My exhibits are supposed to cover all railroads interchanging freight cars. We got our information upon which the exhibits are based from subscribers so that the list of non-subscribers is a list of those nonsubscribers who interchange freight cars with subscribers. I do not know the basis for classifying as plant facilities lines shown on sheet 8 of Exhibit 13, except that these roads were reported to us as being treated as a plant facility and that connecting lines were charging demurrage against the consignee direct (Tr. 410). I do not know whether the Tiffin & Fostoria which connects with the B. & O. is owned by and serves an industry. I do not know anything about whether both that railroad and the Wheeling Traction Company are ordinary interurban lines with some freight business. I do not know whether or not they file tariffs. On Exhibit 15, the heading of the last column refers to the date on which the present basis of reclaim the number of days was made effective (Tr.
[fol. 128] 411). Ordinarily the records would be checked for 4 or 5 months and sometimes more, to arrive at the figure which is then made effective on an effective date. The usual rule is to make an annual check which includes 4 or 5 months. Checks are made practically each year (Tr. 412). It is customary to check the reclaim periods on trunk lines in switching districts, with the same regularity as short lines. I do not know how often the Northwestern has been checked in the last 5 years. On Exhibit 15 there are three roads which were checked last in 1925 and no check was made in 1926, the Alton and Southern, the Fairport, Painesville & Eastern and the Manufacturers Railway, except that the Fairport is being checked now. The previous check was in May, 1925 (Tr. 413). The Manufacturers Railway has not been checked since December, 1925. I said that the actual detention by the industrial railroads in the

Chicago switching district is less than the 4 days allowed (Tr. 414). The Birmingham Southern Rules or their application require intricate and elaborate records and that the returns to the Trunk lines are not sufficient to offset this expense (Tr. 416). I do not know how many of the 1400 subscribers on Exhibit 11 are associates, lines under 100 miles in length, nor do I know how many are independently operated short lines not subsidiaries of the larger lines, there must be two or three hundred; I have not counted them (Tr. 417). Any common carrier railroad can become a subscriber on certain conditions but two-thirds of its connections have to vote for its admission. If it had only one connection which objected, I do not suppose it would be admitted. If there is an objection, it ought to be founded on good and sufficient reasons. The General Committee of the Transportation Division of the Association passes on the objections which are subject to its approval (Tr. 419). [Vol. 129] I do not think that the varying amounts of reclaim on the roads listed on Exhibit 15 results in any discrimination. Our rules do not allow reclaim on road haul traffic (Tr. 420). Rule 6 was adopted to break up discriminatory practices. There is discrimination in the situation when there may be a different allowance to short lines or a different reclaim to short lines for line haul than there would be as between different switching carriers in different cities. There should not be any reclaim on line haul business to a short line as I think that the principle is entirely dissimilar from reclaim, I can justify not allowing any reclaim to short haul lines and I can justify a different number of days reclaim for switching roads in different districts (Tr. 421).

The Witness: So far as I know, all the subscribers to the Per Diem Rules Agreement signed without any exception or any reservation. I know of only one exception (Tr. 422). It is made by the North Western in the Chicago district. The North Western reserves the right to ask connections to pay per diem on cars which the North Western cannot accept in switching service on account of their congested terminals. That exception was allowed by the Chicago General Managers Association. The American Railway Association would not permit any exceptions of that kind unless there is agreement of the roads involved and if an outside party was not hurt (Tr. 423). The informa-

tion on Exhibit 13 was secured from a circular to the members of the Association and, excepting the plant facilities, is a list of electric roads with which members of the Association interchanged freight (Tr. 424). In getting up these exhibits we sent out a circular to subscribers asking how they made settlement for car hire with nonsubscriber connections. The exhibits are a summary of the replies. Information was asked for with respect to non-subscribers, not common carrier non-subscribers (Tr. 425). I said the Birmingham Southern Rules do not furnish the same incentive to handle cars promptly as the per diem rules. [fol. 130] I do not think that a decrease in detention under the Birmingham Southern Rules indicates the stimulating of prompt release of cars (Tr. 426). I do not think the fact that a car is worth more than $1 a day from a traffic standpoint had much to do with the willingness of a railroad with a large car supply to interchange its cars. Present Rule 6 became effective July 1, 1922. The rule which went into effect March 1, 1920 read somewhat differently (Tr. 427). Since this case started, the Association has had a special committee dealing with the matter, and my views represent the views of that Committee which represents all the carriers in the American Railway Association. It is composed of representatives of the New York Central, Pennsylvania, Delaware & Hudson, Frisco, Southern Pacific, Canadian Pacific and Union Pacific. The Committee was appointed by the General Committee of the Transportation Division (Tr. 428). I cannot say whether my testimony represents any of the roads other than those on the Special Committee and the General Committee.

Mr. Towner: Mr. Rice, let me ask you: Is it your point that possibly Mr. Crawford is covering too much territory in saying that he represents the trunk lines here?

Examiner Rice: No, just trying to get the facts, Mr. Towner; just trying to find out the facts, that is all.

Mr. Towner: I would like to have it clearly understood that Mr. Crawford's testimony does represent the attitude of all the trunk lines members of the American Railway Association.

Examiner Rice: You would say that his testimony represents all of the members of the American Railway Association?

Mr. Towner: Not all of the members. I tried to draw a distinction yesterday, Mr. Rice, in this respect; That is, there are some short lines members of the American Railway Association some of whom have testified here who are [fol. 131] not entirely satisfied.

Examiner Rice: I think some of those were associate members.

Mr. Towner: Well, associate members. All of the trunk lines, however, are represented by and concur in Mr. Crawford- (Tr. 429) testimony.

Examiner Rice: Would that apply to trunk lines that are settling with some short road on some basis other than that authorized by the per diem rules?

Mr. Towner: Yes, sir.

Examiner Rice: You would say when he comes here before the Commission and recommends that these rules be strictly followed, and some trunk line states that it does not follow them, his testimony nevertheless represents that road.

Mr. Towner: Yes, sir. (Tr. 430.)

The Witness: I do not think the Birmingham Southern rules provide an incentive for the prompt return of cars. It might be that in the conduct of an industry the desirability of affording prompt service to its patrons and of conducting its own plant efficiently would provide incentive to move cars promptly. I would not be able to say whether the incentive which comes from that source would be such as to render whatever incentive there may be from the standpoint of a railroad to charge for the movement of equipment, relatively negligible. What I said was that under the per diem rules there is a greater incentive for prompt movement of cars than under the Birmingham Southern Rules, and I think there is a greater incentive for the industry that has to pay demurrage to release cars than if there were no demurrage (Tr. 431). I do not agree that the charge for the use of the car is a negligible factor [fol. 132] in moving the car as compared with the efficient conduct of an industry's business. The Central Railroad of New Jersey, the Delaware, Lackawanna & Western and the Lehigh & New England are members of the American Railway Association which I represent (Tr. 432). I am authorized by the Board of Directors of the Association and by the General Committee to represent the Association

in this connection. The three roads named are not on the Special Committee or the General Committee (Tr. 433).

(Document produced by Mr. McCarty offered and identified as Exhibit No. 17 for identification.)

The Witness: I have read this document. I do not know that the Central Railroad of New Jersey, the Lehigh & New England and the Delaware, Lackawanna & Western are committed to the views I express, but I would say I am speaking for them under the authority I have stated (Tr. 435), although this matter was never submitted to a letter ballot or taken up with any of the representatives of these three trunk lines. I think that all railroads, including short lines and industrial common carriers should be put on a uniform per diem basis, and that there should be no exceptions (Tr. 436). I know nothing about the character of service that the Northampton & Bath performs.

Two days' detention might be a good performance for that line (Tr. 437). Based on my information and experience, I said that the effect of the Birmingham Southern Rules was to permit more abuse and discrimination in favor of industries than the straight per diem arrangement. The facts I had did not relate to the Northampton & Bath Railroad about which I know nothing (Tr. 441). If the Northampton & Bath participates in joint through rates they engage in road haul business, and I do not think the Birmingham Southern Rules were ever intended for a road of that sort. I do not agree with the Commission's views expressed in 41 I. C. C. 478. I have that opinion, although [fol. 133] I know nothing about the Northampton & Bath Railroad and in spite of the statement shown me which has been marked for identification (Tr. 442). I think there is a fundamental distinction between switching movements and line haul movements. A switching service performed within designated limits and on a switching charge is a service performed for a trunk line carrier, but a line haul service is performed for and by the road itself. We base the reclaim on the character of service itself of on the length of the haul. It is not practicable to base a reclaim on length of haul, nor do I think it would be fair. Whether or not a service is a switching movement depends first on the location of the switching limits (Tr. 443). I understand that Chicago Heights, Hammond and Buffington are inside the

Chicago switching limits (Tr. 444). If a station was immediately outside a switching district of a large city, service to it from that city would not be on a switching rate but on a line haul rate. It would be a line haul movement (Tr. 445). If the switching limits were extended and the movement was covered by a switching rate in the district, it ceases to be a line haul movement and becomes a switching movement. Something more than changing the switching limits might be done (Tr. 446).

Director Bartel: The fact is, every movement within a switching district is not necessarily a switching movement.

The Witness: If you have a switching service on a switching charge you procure a reclaim, but if you have a service for which the short line or industrial road receives a division of the rate there is no reclaim. The movement must be within designated switching limits (Tr. 447). If a switching road participated in a joint rate, it would receive no reclaim, although the haul might be the same. It is necessary to have certain reclaim arrangements to meet local conditions that are deserving of proper attention (Tr. 448). [fol. 134] If we had two movements between the same points within a switching district, on one of which there was a joint rate and on the other a switching charge, in one case you would not have a reclaim but you would have a reclaim in the other, although the haul might be the same but the compensation of the two lines might be different or the same. As a general rule the compensation is not the same (Tr. 449). As far as I know generally the terminal road receiving the division gets more than it would under the switching charge (Tr. 450). I did not obtain any information as to whether or not the Hannibal Connecting Railroad was a plant facility. We asked subscriber roads how they were making settlement with nonsubscribers and it was shown that they treated it as a plant facility, and collected demurrage from the consignees direct (Tr. 451). I do not know how many of the 218 nonsubscribers on Exhibit 12 have been refused subscription rights to the American Railway Association. Some have been subscribers and were suspended because they did not pay their per diem bills. I do not know that a number wished to subscribe and were refused the right, and deny that it is the fact. The records of the American Railway Association on such a

matter are kept permanently on file (Tr. 455). If a road named in the exhibit did apply last year, the record would be in the Secretary's office of the Association and might be in my office. Exhibit 12 is prepared from reports sent me by the trunk lines. The Union Railroad on Exhibit 15 was a party to the Industrial Railways case (Tr. 456). It is therefore treated as an industrial railroad, and I understand it performs a switching service within switching limits. I do not know where its track is, but if it ran from one city to another and was not entirely within a switching district, it is a switching railroad for the purposes of Exhibit 15 (Tr. 457). I am not undertaking to distinguish for reclaim purposes between railroads which perform only [fol. 135] switching and railroads which are parties to rates, regardless of what the distance in the engine service may be. The Union Railroad may perform a lot of switching and a lot of road haul service which would allow it reclaim on the switching and deny it reclaim on the road haul. I do not think there are a large number of subscribers in Exhibit 11 who from the standpoint of my last distinction or definition belong in Exhibit 15. If the Union Railroad belongs in Exhibit 15 because it does some switching, although it may also have line haul, there are a lot of other railroads in Exhibit 11 of which the same is true (Tr. 459). I think every common carrier road which is eligible to subscribe to the per diem rules should subscribe and should be permitted to subscribe; that is the position of my committee (Tr. 460). Its eligibility is to be determined under the rules now in effect (Tr. 461). If a road had only one connection that objected, that would be reviewed by the general committee, but the mere objection of one road would not keep them out of the agreement. I am not familiar with the facts as to the nonsubscribers shown on Exhibit 12. There is no road on Exhibit 12 with which I am familiar, nor concerning which I can give the facts of where they lie and how they operate.

Mr. Towner: The statistics of railways in the United States, issued by the Interstate Commerce Commission, on page 194, shows the Union Railroad as owned by the United States Steel Corporation and as a switching terminal company. Will you concede that is what the classification of the Commission is?

Mr. Burchmore: Yes. I was not questioning that but the propriety of its standing as a switching road in the purposes of his testimony.

The Witness: Several industrial roads use foreign cars for their local business. I can get you the names of them (Tr. 463). In checking practically all of these roads I find that nearly all of them do more or less local service and use [fol. 136] foreign cars in that service, both under the Birmingham Southern Rule and the Reclaim Rule. When they do it under the per diem rules they pay for the car, and when they do it under the Birmingham Southern Rules they do not pay for it. A great number of terminal railroads owned by trunk lines have no cars of their own (Tr. 464). The Birmingham Southern Railroad performs switching service under which it would receive reclaim under the per diem rules, although it also handles thousands of cars under which it participates in joint through rates and on them would receive no reclaim. That is a marked abuse under the Birmingham Southern Rules, as the result is that road pays nothing for car hire and under the per diem rules would pay a great deal which it would not get back in the form of reclaim (Tr. 465). The principal abuse of the Birmingham Southern Rules is the difference in the sum of money the Birmingham Southern pays for cars. I call that an abuse. It gives that road the privilege of using cars without paying for them and of using them in local service without paying. I do not know whether it uses them differently or that cars are detained longer. Under per diem it could use the cars in local service but would have to pay (Tr. 466). Following the decision in the Northampton & Bath case, I thought that decision was final and that as long as the Commission had condemned the reclaim and per diem arrangement this other basis should be applied on all roads. I expected it would decrease the amount to be paid for cars but advocated it only because that is what I thought the Commission had decided. The car service rules are included in the per diem rules introduced as Exhibit 10 (Tr. 467). It is possible for a road to subscribe to the Interchange Agreement without subscribing to the Per Diem Agreement, but when it is the other way around they are required to subscribe to both (Tr. 469). I said that in Chicago the roads there were allowed 4 days' free time, which [fol. 137] was more than they required. When I advocate

the continuance of Rule 6 (b), I think I represent the views of the members of the American Railway Association, including roads which do not comply with it (Tr. 471). I would not say that all members of the Association who do not comply with Rule 6 (b) are eliminated. I might not represent the railroads which voted against the rule but they are good soldiers and if out-voted as a rule adopt the rule. We submit the rule for vote by letter ballot, and I will furnish the result of the ballot. We did not ask the subscribers to report special allowances to other subscribers (Tr. 472). I know of no short line subscribers which are accorded special car hire allowances. Page 11 of Exhibit 12 is a list of roads involving a direct violation of Rule 6 (b) (Tr. 473).

Director Bartel: Mr. Towner, I would like to ask you for the record, if you will supply information showing a list of trunk lines making special concessions on car hire to nonsubscribers (Tr. 476) and a list of trunk lines making concessions to short line subscribers.

Mr. Towner: I have no specific authority to furnish such a list.

Director Bartel: I will submit to the Commission the question of issuing a questionnaire to be filed under oath.

Mr. Towner: Under those circumstances I will undertake to furnish such a list as you require (Tr. 477).

Director Bartel: We want to find out from all subscribers whether they make any special concession under Rule 6 (b) to any railroad, whether it be subscriber or nonsubscriber (Tr. 478).

The Witness: I would like to make a statement with respect to my testimony. When I used the word "discrimination" I used it as intending to describe irregularities (Tr. 492). Some departures from the per diem rules are required by orders of the Commission, and in those cases I do not wish to call them discriminations although I do call them irregularities. I have investigated the situation referred to by Mr. Hale, involving coal handled by the [fol. 138] Baltimore & Ohio and Pennsylvania to Bennings (Tr. 493). I am told that the Baltimore & Ohio handles the coal in road haul and delivers it to the Pennsylvania. The Pennsylvania switches it to the Navy Yard at Bennings and is allowed a switching reclaim which has been allowed

for a number of years. Since April, 1926, the reclaim has been 4.26 days. I also investigated the reclaim of the Long Island Railroad. The Pennsylvania allows the Long Island a reclaim on switching business amounting to 4.7 days which has been in effect for some time. A reclaim has been allowed for a number of years. I was told that there is no point on the Baltimore & Ohio and Pennsylvania where they switch cars for other roads that they do not get a reclaim, and no point where cars are switched for them where they do not allow reclaim. That covers only subscribers (Tr. 494). That would indicate that reclaim practices in the east have not been abolished (Tr. 495). I said that when rule 6 provided that settlement between subscribers and nonsubscribers was a matter of agreement, there was opportunity for short lines favorably situated to make better arrangements than other short lines. I would say that was an irregularity and not necessarily a discrimination. The possibility of such an irregularity would not be as great with a road with one connection as if it had two or more connections (Tr. 496), but it might be possible under certain conditions. It might have other interests separate from that particular shortline. Only in those instances can I see where there would be any possibility of playing one against the other when there was only one line (Tr. 497). I think it is common knowledge that this was done in many parts of the country, but I cannot give any actual cases (Tr. 498). The General Committee also has the power of review over the two-thirds vote, in admitting a railroad to the per diem agreement. I mentioned all the conditions with which a road must comply in order to become a subscriber (Tr. 499). The connections of an applicant could not vote arbitrarily, and I do not think the General Committee would adhere to a two-thirds vote un-

[fol. 139] less the objectors had valid reason for objecting. The complicated and expensive accounting under the Birmingham Southern Rules will be explained in the Chicago cases, or the Chicago situation affords a better illustration of the situation. I do not know that I am qualified to testify as fully in regard to that matter as some of the Chicago witnesses (Tr. 500). In my testimony I had in mind all of the situations, but it would not apply to the same extent if a road only had one connection. If it has only one connection, there is a difference in accounting from that which

takes place when a railroad delivers cars to shippers under the average agreement. In such case, I would say the connection has practically the same accounting under the Birmingham Southern Rules that they would have in applying demurrage against an industry which does its own switching, but in addition to that the road has to pay the car owner the per diem while the cars are on that railroad (Tr. 501). My statement about expensive accounting would apply to a road like the Northampton & Bath having three connections. In assessing demurrage against an industry which does its own switching and this industry's tracks connect with through railroads, a road delivering the car applies the demurrage from the delivery on the interchange track until the car is returned to that track or another interchange track. It has the burden of ascertaining when the car was delivered if it was returned to another road. It is up to the railroad delivering the car to the industry to apply its demurrage tariff, and it must get the information either from an industry or from the other road. I do not think there would be much distinction or any substantial difference in expense of accounting between applying demurrage against an industry having two or three connections and applying the Birmingham Southern basis to a short line railroad having two or three connections (Tr. 503). [fol. 140] It should be considered, however, that if the accounting method under the rules was changed, the result might be to throw all the burden of accounting for all the short line roads onto a few short line connections. The more railroads connecting with the short line the more complicated the accounting would be. I know nothing about the car hire arrangements of the Jacksonville Terminal (Tr. 504). In conformity with the Commission's criticisms of the reclaim rules, paragraph 5 of Per Diem Rule 5 was added, which provides that the code of switching reclaim rules of the Association shall govern in determining reclaim, unless otherwise unanimously agreed to by the interested roads The reclaim rules were revised and cover comprehensively the method of determining reclaims, makings checks, what cars should be included, cars used in local service, etc. We feel that if the rule is complied with the reclaim will only represent the per diem which the

switching line has to pay on cars (Tr. 505), while they are being switched for the Trunk line. Prior to the adoption of this rule, the amount of reclaim was determined by the individual lines under agreements which did not so nearly represent the actual time. There was no provision in the rules for a check or how it should be conducted. The reclaim rules were made a part of Per Diem Rule 5, in March, 1923 (Tr. 406). They now require the making of an annual check and the fixing of reclaim on the basis of actual time required to do terminal switching. Under the old rule there was always a question of when a car was in switching service and the method of determining the actual average time. The present rules specify clearly how the actual average time shall be determined. Rule 8 of the Reclaim Rule covers it in detail (Tr. 507). In the case of industrial roads, the check is made by the Association. It was formerly made by the local roads. Only cars handled in terminal switching service are now included, but I do not know what was formerly done (Tr. 508). I do not know what was done prior to the adoption of Rule 8 of the [fol. 141] Reclaim Rules (Tr. 509). The distinction between what the railroads proposed in the Northampton & Bath Case in 1916 and what the Association has done is that there was no basis as to how reclaim should be determined, and we now provide in detail how it shall be done. I think the changes are such as to prevent any probable abuses. Many industrial switching roads use foreign cars in local service (Tr. 510). When such a road gets back per diem in the form of reclaim, the check to determine the average period of reclaim allowance excludes cars used in local service, so that, while the road gets reclaim on cars in terminal switching service, they will pay per diem without reclaim on cars used in local service. Cars used in terminal switching and then diverted are also excluded from the check. We include only cars used in terminal switching service exclusively (Tr. 511). Under the rules we exclude all detention on individual cars beyond 8 days in getting average detention. That is the method used in arriving at the average time. If the average did not exceed the reclaim period, a road would be allowed reclaim of per diem paid up to 8 days (Tr. 512). We would include only 8 days on one car in getting the average. If the detention did not exceed the average reclaim period, the roads would be al-

lowed to reclaim all money paid on the 8 day cars. The same would be true on cars loaded in and loaded out and detained 16 days. It might be possible for a switching road to reclaim all money paid for the detention of a car for 16 days in the particular month it used the car, although for 10 days it used it in local service, but such a car if used in local service would not be included in arriving at the average (Tr. 514). In some terminals the 8 and 16 day limit on some cars has been reduced by agreement. In some places there is a maximum of 7 days on one car and 10 days on a round trip. The idea is to make the switching line whole, and nothing more (Tr. 516). In individual cases it might be possible for a switching road to use cars in local service and reclaim per diem. The rule works out though so that [fol. 142] when a switching road uses a car in local service it pays per diem and does not get it back in reclaim. Such a car has never been counted in determining the average reclaim (Tr. 517). There might be months in which the cars would be used but any such use is offset by reducing the average reclaim when the next checking is made. If there were many 16 day cars so used, it would result in so much reclaim that the road would cut the cars out because it exceeded the average. If it happens on one car, it is extraordinary, and the rule of averages would wipe it out (Tr. 518). In determining the reclaim period which is to be allowed Sundays and holidays are included: count every day. It is possible for a switching line under the Birmingham Southern Rules as applied at Chicago, to hold a car for 16 days and pay no per diem or demurrage (Tr. 519). To do this a road would have to have enough credits to offset the debits. I can see no relationship or comparison between per diem with reclaim and the debit and credit plan. I do not think the effect of the per diem rules is to recognize per diem credit (Tr. 520). If a road under the Birmingham Southern rules has 3 days' free time and releases a car in 2 days, the car earns a credit of one day. Another car which is detained five days would accrue two debits (Tr. 521). The average detention on the two cars would be three and a half days and the road would have to pay one debit. If the same thing happened under reclaim of three days, three and a half days would be the average reclaim, but the two things are separate and distinct (Tr. 522). I see no comparison between the debit and credit

plan and the per diem which is based on 365 days in the year and you are setting that up against a modified demurrage plan under a debit and credit plan. Under the Birmingham Southern plan, if a car is received during the day, the road might get some additional free time because the free time would not start running until 7 A. M. the next day, but per diem is paid every day including Sundays and holidays (Tr. 523). I do [fol. 143] not know that some industrial roads get more free time under reclaim than they do under the Birmingham Southern rules (Tr. 525). In speaking of efficiency in handling freight cars, I had in mind the incentive which exists in per diem method of settlement for prompt movement of cars. If it should be found from actual results produced that greater efficiency has been attained under the Birmingham Southern Rules than under the reclaim rules, I would still say there is not the same incentive under the Birmingham Southern Rules (Tr. 528). A lessening of car detention might be due to other circumstances, perhaps lack of congestion and prompt unloading by consignees (Tr. 529). I do not know what the results have been under the Birmingham Southern Rules with respect to car efficiency. I do not think anybody can tell what the detention would be during a particular period under any particular set of rules. I think that if a road is receiving a reclaim of three days it has the same incentive to move the car promptly as it would if it had to pay per diem. Even though it knows it is going to get back $3.00 on every car it handles, I think it will handle it just as promptly as though it knew it would not get back a cent (Tr. 530). In allowing reclaim I do not base it entirely upon the fact that the switching road performs a service for a trunk line carrier. In the case of a switching road, it performs a switching service on a switching charge. A short road outside of a switching district either participates in a through rate or handles the business under its local tariff (Tr. 531). In considering service performed by a switching road, and line haul service performed over a similar distance, I adhere to the distinction between service performed for another railroad and that which a railroad performs for itself (Tr. 532). Under Car Service Rule 14, governing cost of rearranging or transfer of loads improperly loaded, part of the cost of transferring or rearranging a load is

charged to the delivering road. Under that rule, the Chesa-
[fol. 144] peake & Ohio could make a rearrangement and charge the cost to the Sewell Valley if the Sewell Valley loaded the car and if it is a party to the agreement (Tr. 533). It is the duty of the Sewell Valley, if the car is loaded on its line, to see that it is loaded properly. If this is overlooked, due to lack of proper inspection, it is a responsibility of the Sewell Valley (Tr. 534). If a short line subscriber having one connection became insolvent, other railroads would have difficulty in getting their per diem. I think it would be desirable for short lines close to the ragged edge and having only one connection, to settle with their connecting line if a bond was given. During the past two years we have only suspended one road from the Per Diem Agreement on account of its failure to pay per diem. If a road were an applicant for admission to the Per Diem Agreement, these things would be considered closely. Switching charges are theoretically based on cost of operation, not including car hire expense. By cost of operation, I meant generally everything except car hire expense, although I was not undertaking to say how the switching charges were made up or what they included. Reports of reclaims allowed industrial roads have been sent since 1914 to the Secretary of the Commission (Tr. 536). A subscriber to the Per Diem Agreement, furnishing equipment, and less than 100 miles long, is not allowed to vote on changes in the rules (Tr. 537). It has no vote in making rules to govern the use of its own cars no matter how many cars it owns. It has to be more than 100 miles long to have a vote. A vote to adopt a rule has to be approved by a majority of the members and that majority must represent two-thirds of the freight cars owned. Generally, all rail-
[fol. 145] roads adopt rules which are submitted to them by the Association (Tr. 538). If a road does not vote at all, it is the same as a vote against the amendment, so that it might be possible for railroads owning one-third of the cars, plus one, to defeat a change in a rule. The votes on the rules, however, are letter ballots and have been almost unanimous (Tr. 539). On Exhibit 11, eight railroads, the Santa Fe, the Baltimore & Ohio, the Canadian Pacific, the Canadian National, Chicago, Milwaukee & St. Paul, New York Central, Pennsylvania and the Southern own more than one-third of all the freight cars owned by all sub-

scribers. It is possible that if they acted in concert they could prevent a change in any per diem rule. I do not think that has ever happened or ever will happen (Tr. 540). There is considerable objection to filing the per diem rules in the present form as tariffs. They contain many provisions that should hook up with other rules. The car service rules are part of the per diem rules as are the interchange rules. If the per diem rules were filed as a tariff (541) it would be necessary to file the interchange rules of the mechanical division, the car service rules, and all other rules referred to in the per diem code. If railroads supplied their quota of equipment, their per diem would balance. I do not know what number of cars a railroad should own.

Director Bartel: I do not think we will require in this proceeding the filing of a statement prepared about in 1920 by a number of railroad officials in which they sought to set up a formula to be used in determining the number of cars each railroad should own (Tr. 542).

The Witness: I cannot say whether the roads I represent would be willing to accord divisions to short line [fol. 146] carriers under Rule 6 (b). I do not think divisions should be discussed at all, as divisions and car hire are separate and distinct matters. I do not think divisions have anything to do with this case.

Q. Mr. Towner asked quite a number of questions the other day to bring out whether or not short roads were allowed divisions.

Mr. Towner: I asked those questions because the application of the Per Diem Rules depends upon whether or not a road receives a division or handles traffic at a switching rate (Tr. 543).

I agree that divisions and car hire are separate and distinct things (Tr. 544).

The Witness: The parenthetical clause in Rule 6 (b) which refers to railroads declared to be common carriers was intended to apply to roads declared to be common carriers in proceedings before the Commission. All that is intended to cover is industrial roads found to be such by the Commission and because it had prescribed a different basis of settlement for them (Tr. 545).

We have another witness who will discuss the matter of the per diem rate in detail.

Mr. Burchmore: I may say that I will have no contention to make in respect to the $1 rate.

Mr. Hitt: I think it would be well for evidence to be put in as to what would be a proper rate. We do not object to any rate that is proper (Tr. 457).

Director Bartel: The order of the Commission puts the rules for car hire settlement, between common carriers by railroad in the United States for the use and detention of [fol. 147] freight cars on the lines of carriers other than their owner, in issue. That, I take it, would include the amount.

Mr. Burchmore: And the rate per day.

Director Bartel: Yes.

The Witness: I have investigated the circumstances under which I was given authority to speak for the American Railway Association and its trunk line members (Tr. 548). When this investigation was instituted a legal committee was appointed to take care of the investigation on behalf of the Association. The legal committee appointed a special committee to handle the case and counsel was employed. These arrangements were approved by the Board of Directors and submitted to a members' meeting and approved at that members' meeting with no dissenting votes. The vote was taken in an open meeting. A report made by the Board of Directors stating what had been done (Tr. 549) was adopted at the open meeting and no member line of the Association has dissented. The Association is not incorporated. The vote I speak of was not taken by letter ballot (Tr. 550). The report was approved at the meeting with no dissenting votes. It carried with it authority to represent the Association, but I do not know that it carried authority to represent associate members which had no vote. I do not think it was i-tended to claim authority to speak for the individual members of the American Short Line Association (Tr. 551).

T. W. DEMAREST was called as a witness and, being duly sworn, testified as follows:

I am General Superintendent of Motive Power of the Western Region of the Pennsylvania Railroad and have

charge of the condition, cost and maintenance of locomotives and freight cars and operation of the shops. I have [fol. 148] been with the Company since 1889 (Tr. 554). I am a member of the Mechanical Division of the American Railway Association and was appointed chairman of the committee to investigate the cost of owning and maintaining freight cars. I got on the committee representatives of the New York Central, Milwaukee and Frisco and a subcommittee from the Transportation Division was appointed (Tr. 555). As chairman of the committee I had entire charge and direction of the development of the cost of owning a freight car. Prior to 1902, settlement between carriers for the use of foreign cars was on a mileage basis. In that year the per diem rate was established (Tr. 556). In 1908 a committee was appointed to determine the per diem payment which should be made per day for the use of foreign cars, the per diem rate to be submitted to the members of the Association on letter ballot. The per diem rate was first based on cost of repairs, cost of replacements (depreciation and retirements), cost of taxes, interest on cost, and other allowances, and it was recommended that compilations be made yearly (Tr. 557). This recommendation has been the basis of subsequent changes in the per diem rate. The latest year for which figures are available for use in this case is the calendar year 1925. A summary of the statistics in that year for all Class I carriers shows a total cost per day of 98.833¢.

(Summary of cost received in evidence as Exhibit No. 18.)

The details of this summary are shown on Schedule I (Tr. 558). The amount taken for freight train car repairs mary of the statistics in that year for all Class I carriers under Account 314 and is prescribed by the Commission. It includes such matters as labor repairing cars, cost of material used and repairs, shop expense, store expense on material, power plant expenses, credit for bills against [fol. 149] other railroads for repairs, charges from other railroads for repairs (Tr. 559) and settlement for foreign cars destroyed. The total amount of Account 314 was divided by the total number of freight cars owned and leased by Class I carriers, including cabin cars, and the result was divided by 365 days, producing 42.838¢ per day as cost of repairs. Railway Tax Accruals are taxes on all

railway operating property as reported to the Commission in Accounts 701 and 702. The amount we used was obtained from the Commission's preliminary abstract of common carriers for 1925. The amount used for investment of Class I carriers is the total amount charged to these accounts and was taken from the same abstract (Tr. 560). The total railway tax accruals divided by the total investment produces the tax rate per dollar investment, which multiplied by the total investment in all freight train cars owned and leased by Class I carriers produced the amount of taxes assignable to freight cars. The result was divided by the total number of cars, owned and leased by Class I carriers, which gave the average cost of taxes per car per year, which was then divided by 365 days to give the average tax cost per car per day. The total investment of freight train cars was obtained by multiplying the average cost of $1343.33 per car by the number of cars, 2,387,543, producing $3,207,258,138 as the investment. The value of $1343.33 for average car cost for 1925 was taken from a report on the original cost of 2,567,247 cars (Tr. 561).

(Document received in evidence as Exhibit No. 19.)

Interest was computed at 6% on investment, the result being divided by the number of cars to obtain cost per car per year, and the latter divided by 365 days to give cost per car day. The rates and methods of accruing depreciation of different railroads have not been uniform, so that [fol. 150] these charges have not been an expression of car life. A retirement account has been provided in the classification of accounts to take care of the over or under depreciation accrued at time of retirement (Tr. 562). In arriving at a retirement rate of 4.5% a detailed study was made in connection with the service value and service life of freight train cars.

(Said document was introduced in evidence as Exhibit No. 20.)

The service value shown in Exhibit 20 is the total cost of the car, plus the cost of dismantling, less the salvage recovered at the time of retirement, which conforms to the Commission's requirements (Tr. 563). That is the method of depreciation fixed by the Bureau of Accounts. The average cost per car used was $1,343.33 and the average service

value was $1,232.98, the service value being 91.79% of the cost. This percentage was divided by 19.21 years, representing the average life of freight train cars retired on 68 railroads during the years 1920 to 1925, as shown on the next exhibit (Tr. 564).

(Said exhibit received in evidence as Exhibit No. 21.)

This resulted in 4.78% as representing the annual depreciation percentage to be charged to operating expenses. We have, however, used 4.5% for depreciation as established by the Director General. In the original formula there was an item for other allowances which could not then be directly allocated due to the lack of uniformity in the accounting methods used (Tr. 565). Under present accounting methods we can reasonably allocate these extra expenses and have done so (Tr. 566). Formerly 2.5% of the average cost per car was used for incidental allowances. In Exhibit 18 we show specific elements of cost in lieu of the arbitrary of 2.5% formerly used (Tr. 567). It has been possible to definitely allocate a proportion of primary accounts to such other allowances, which produces [fol. 151] 3.08% of the 1925 average cost of cars instead of 2.5%, the difference being due to changes in the character and design of equipment. Exhibit 18, line 9 to line 17, covers allocation of salaries and expenses of mechanical officers and their departments, maintenance and shop and power plant machinery, injuries, insurance, stationery and printing and joint equipment accounts (Tr. 568). The amounts used for each of these items have been taken from the Commission's preliminary abstract of statistics for Class I roads for 1925. The total is shown on line 18 of Exhibit 18. Lines 20 to 27, inclusive, of the same exhibit detail all maintenance of equipment repair accounts which are taken from the same source. Line 28 shows the total. Line 22 of the same exhibit, showing freight car repairs, divided by the total maintenance of equipment repairs, produces the ratio of 39.402% that freight train car repairs bears to total equipment repairs. The total on line 18 multiplied by 39.402% shows the proportion assigned to freight train car repairs. This result was divided by the total number of freight cars involved, then that result was divided by 365 days to give the cost per car day (Tr. 569). The cost of maintaining shops and engine houses has been

taken from the Commission's preliminary abstract referred to. The same percentage as used in securing car repairs was used to produce the percentage of maintaining shops assignable to maintenance of car repairs. This result was reduced to a cost per car day. To get salaries and expenses of general officers and their departments, the total operating expenses, excluding depreciation, retirement and general expense accounts, was developed, the figures being taken from the same abstract of statistics (Tr. 570). The ratio [fol. 152] that freight train car repairs bore to this total, or 9.002%, was taken of the total amount of general expenses and the result reduced to the cost per car day as in other instances. The accounting classification requires the cost of hauling repair materials to be added to the cost of company materials. No charges are made for hauling company materials over company lines and no cost data is available. Two studies had been made of the cost of company haul and these studies are shown in Exhibit 22.

(Document received in evidence as Exhibit 22.) (Tr. 571.)

They gave an average of 6.06% of the cost of the materials as the cost of company haul. The two studies were made on railroads in close proximity to the sources of material and the costs were probably lower than would have been the costs with carriers further removed. This percentage was nevertheless used (Tr. 572). These studies were made in 1922 when costs and rates were not the same as now but the result in percentage would not be affected by the downward reduction. A study of 20 larger Class I carriers was made to determine the cost of materials, giving a result of 47.89% of the total charge as representing material. 47.89% of the total charged to Account 314 was taken to represent material cost, and 6.06% of this material cost was taken to represent cost of company haul. This result was then reduced to an amount per car day. The investment in shops and engine houses, shop machinery and power plant machinery was taken from Exhibit 20 covering reports from 58 carriers owning 816,878 freight cars (Tr. 573). Exhibit 23 is a summary of replies made to an Association circular of September, 1926, sent to Class I carriers.

(Said document received in evidence as Exhibit No. 23.)

[fol. 153] The circular which was sent was Schedule No. 7.

(Said document received in evidence as Exhibit No. 24.)

To the total investment referred to was applied the tax rate of 1.628 plus the 6% interest rate. The sum thus produced was reduced to 39.402% to represent the part assignable to freight train car repairs (Tr. 574). This was then reduced to a cost per day by using as a divisor the number of cars owned by the carriers reporting the investment and then to a cost per car per day. Line 48 of Exhibit 18 shows material cost excluding store expense. Exhibit 25 shows the average portion of the year that the working stock consumed is carried continually.

(Said document received in evidence as Exhibit No. 25.)

Ninety days or one-fourth of the yearly consumption was used to show the constant working stock, and one-fourth of 6% or 1.5% applied to the cost of material to develop that expense, incident to owning and maintaining cars. The result was then worked down to the cost per car per day (Tr. 575). The recapitulation shows that the total cost per car per day of the elements considered was 98.8¢. We included cabin cars as they could not be segregated and they cost less to acquire and maintain than revenue cars. In my statements we have enumerated only those items for which we had a firm foundation (Tr. 576). Railroad accounting does not generally permit an allocation of costs in all respects, and there are other items which might be included that could not be segregated. Such costs are repairs to power plant buildings, depreciation and retirements on such buildings, cost of hauling repair material including cost of fuel, freight charge on fuel, interest on investment, power plant buildings, freight car repairs, tracks, shops, land and grading, interest on stock, power plant fuel, roadway overhead, shop buildings, power plant buildings and repairs to tracks. That is not a complete list (Tr. 577).

[fol. 154] Cross-examination:

The cost of replacement is not carried on a mileage basis but on an annual basis on the estimated life of the car. Wear and tear, however, is brought about by miles. A car is worn out by the use made of it (Tr. 578). That would not be true, however, of repairs and replacements as a

result of accidents or obsolescence. What we have tried to do is to set up as nearly as we could figure the cost of owning a car. It did not make any difference to me who was going to own it (Tr. 579). The figure of approximately 99¢ per day that I have used is not an estimated figure. The first four items included in it are figures reported to the Commission for Class I railroads. The remaining items may not be absolutely correct to the fraction of a cent. On depreciation, for example, we had figures on 58 carriers which was actual (Tr. 580). We have set up our 6% interest charge on the basis of original cost and that is the only rate we have set up (Tr. 581). A cabin car is commonly known as a caboose. We could not segregate the costs shown on the Commission's records as between different classes of cars. If we excluded the cabin cars, it would operate to slightly increase the cost of other cars (Tr. 583). In establishing service life of a car, we determine the amount of money which should be allocated for its replacement at some time, the cost of the car plus the cost of retiring it, less the salvage. The average car life is shown as 19.21 years, and the average age of cars now in service is shown as 19.21 years. The cost of repairs applied because of users' defects is an appreciable figure (Tr. 584). I have no definite figure on it (Tr. 585). The using line is penalized for the misuse of foreign cars through its own repair cost. If the car belongs to the user, the cost comes out of the user's pocket (Tr. 586). In the cost of [fol. 155] repairs reported to the Commission must be the cost of misusing foreign equipment and the cost of misusing owned equipment (Tr. 587). If I am using somebody else's car and have owner's defects on that car, I repair them and bill the owner who pays me. I take that money and settle my bills. Then he bills me $1 a day but I do not pass that on to the other fellow. To some extent the money every carrier spends for repairing cars will go into a repair rate, but I do not know to what extent it influences it (Tr. 588). I could not bill an owner for his repairs and also bill him for per diem (Tr. 589). The cost of $1343.33 per car which I have shown is average original cost. Some cars may not have cost that much. On a reproduction basis, some of them might still be worth almost as much as they cost. We considered the matter but concluded not to use reproduction value (Tr. 591). I do not think it is

proper to decrease the amount of investment in the car by the amount of per diem collected, as I do not have the use of money while the borrower has the car. I think a charge of interest on original investment is quite proper (Tr. 592).

Mr. Hitt: I will put in these exhibits. One is a form of agreement between the Director General and short lines having competitive traffic.

(Document received in evidence as Exhibit No. 26.)

Mr. Hitt: I have a similar form for roads having no competitive traffic.

(Document received in evidence as Exhibit No. 27.)

Mr. Hitt: I have also what is usually referred to as the waiver form of contract, the agreement made by the Director General with a number of short line railroads in the matter of two days full time (Tr. 594).

(Document received in evidence as Exhibit No. 28.)

[fol. 156] Mr. Hitt: I also have a list of the short line railroads that entered into these various contracts and the kind of contracts used.

(Document received in evidence as Exhibit No. 29.)

Mr. Hitt: I also have printed forms of Circular CS-59 and CS-77 of the Railroad Administration (Tr. 595).

(Document received in evidence as Exhibit No. 30.)

Mr. Hitt: One of the factors in this case is that it would be inefficient and uneconomical to have an unduly large stock of cars in the country. We have testimony on the subject of whether short lines should have a stock of cars and whether or not the per diem rate should operate as a means of compelling short lines to furnish cars of their own.

Director Bartel: That is not an issue in this investigation.

Mr. Towner: The obligation of short lines to build cars is not in issue. All I am interested in is seeing my railroads get paid for their cars when they are used by somebody else.

Director Bartel: I think that is the only issue in this case. We could not determine in this case the number of cars which lines ought to use, if any at all.

HARRY A. BUFFUM was called as a witness and, being duly sworn, testified as follows:

I am treasurer of the Lime Rock Railroad Company and have been with the road 25 years. Conditions of operation are the same now as they were at the time of the former hearing. I have a map showing the location of industries on the line (Tr. 600).

[fol. 157] (Map received in evidence as Exhibit No. 31.)

I have prepared a statement showing the situation of the Lime Rock Railroad since the Commission's decision.

(Document received in evidence as Exhibit No. 32.)

The Witness: Sheet 1 of Exhibit 32 is a statement of the mileage and equipment of the Lime Rock Railroad. Sheets 2, 3 and 4 (Tr. 601) show number of cars handled for various industries on the road for the years 1923, 1924 and 1925. Sheets 5, 6 and 7 are applicable tariffs. Sheet 8 is an income account for 1923, 1924 and 1925. Sheet 9 is a statement of revenues and expenses for the same years. Sheet 10 is a more detailed income statement for the same years. Sheet 11 shows for the same years an allocation of revenues and expenses as between the railroad and the owning corporation, the Rockland & Rockport Lime Corporation, and that subdivided as between inter and intra-plant and common carrier service and then separately, the common carrier service to parties other than the Lime Corporation. Sheets 12 to 15 show the loaded cars received from and delivered to the Main Central for 1925 and 1926. Sheet 16 shows the intra-plant service for the owning company (Tr. 602). Sheet 17 is a statement of the tonnage of lime and limestone shipped by the owning company in 1923, 1924 and 1925. Sheets 18 and 19 show car hire paid under the Commission's order. Sheets 20 and 21 show per diem which would have been paid under the per diem rules with out reclaim. Sheet 22 is a balance sheet for 1925. Sheet 23 shows demurrage collected in 1925 and 1926. Sheet 24 shows average detention of cars for July, 1926, taken as representative. We went on the Birmingham Southern basis in 1922 (Tr. 603). A new lime plant has recently been established on the Maine Central at Thomaston, about [fol. 158] three miles from Rockland. It has the same rate

on lime as the rate from Rockland, and the Maine Central has extended its yard limits to include the new plant (Tr. 604). The owning corporation only charges $1,000 per year against the railroad for salaries and office expenses. We have discontinued paying the Maine Central $10 a month for collecting our charges. We make interchange reports with the Maine Central for cars interchanged and the matter of computing time is arranged between the yard offices. We have no local agent (Tr. 605). The situation as to stock ownership of the Lime Rock Railroad by the Rockland and Rockport Lime Company is the same as it formerly was. I do not think any scheme of car hire payment could reduce our car detention. The big incentive is that we look on the Lime Rock Railroad as a plant facility of the Lime Company and the Lime Company looks to it for efficient and prompt service. I do not think it would be possible for us to get cars out more promptly than now.

Cross-examination:

The Lime Rock Railroad is a common carrier, but the same officers run the two companies and the existence of the railroad depends altogether upon the success of the Lime Company and the Lime Company is the only excuse for the existence of the railroad. None of our equipment is interchanged with the Maine Central (Tr. 607). We have a sufficient supply of our own cars for our local interplant or intra-plant service and use no foreign equipment for it. All that service is done by these four and a half yard dump cars (Tr. 608). Sheet 5 of Exhibit 32 is our tariff now in effect. We only make a switching charge for service between the Maine Central and points on our line and participate in no joint rates and receive no divisions. Our charges are added to the Maine Central rate and collected from the shipper or consignee (Tr. 609). There have [fol. 159] been no changes in our charges since December 1, 1920. We have 40 or 50 cars which are leased on an annual basis by the railroad (Tr. 610) to the Lime Company. They are standard gauge dump cars. This rental is shown as non-operating income on sheet 8 of Exhibit 32. On sheet 11 we segregate income to show the amount of business the railroad does for the Lime Company (Tr. 611). That is the plant facility service (Tr. 612). These

accounts are capable of segregation on the books so that we know when we are acting as a plant facility and when as a common carrier. The rental basis of the cars is $20 per year per car (Tr. 613). We receive no private car line cars from the Maine Central. Sheet 16 of Exhibit 32 is all plant facility service, the income from which is shown in the preceding sheet I referred to (Tr. 614). Sheets 19 and 20 of Exhibit 32 show that from August 31, 1925 to August 31, 1926, the Lime Rock paid the Maine Central $21 for car hire for use of foreign cars, but under the per diem rules it would have paid $5,644 as a nonsubscriber (Tr. 615). I think the per diem items shown on sheet 22 of Exhibit 32 should be demurrage (Tr. 616). Our investment figure shown on 19 of Exhibit 32 are book figures. We get almost no company material or coal from the Maine Central (Tr. 617).

DAWSON DITT was called as a witness and, being duly sworn, testified as follows:

I am secretary and comptroller of the Moshassuck Valley Railroad and have been with it for about nine years. I have general supervision over accounting, operating and trackage. It is a railroad two miles in length, operating between Saylesville, R. I. and Woodlawn, R. I. At Woodlawn it connects with the New York, New Haven & Hartford (Tr. 619). We are interested in car hire for the [fol. 160] reason that in a complaint we filed asking for higher divisions the Commission gave us the Birmingham Southern rules for car hire settlement in lieu of an increase in divisions. These rules have worked out satisfactorily and we hope will not be changed. But if the Commission determines that there must be some universal rule of car hire and our present arrangements are changed, we want the Commission to take care of our revenue requirement in some other manner (Tr. 620).

Director Bartel: The answer of this road to the questionnaire sent out by the Commission is a part of the record.

The Witness: The Mashassuck Valley has been found by the Commission to be a common carrier and now does a freight business only (Tr. 621). 25% of its traffic is local and 75% is interchange. It owns 28 box cars and 5 coal cars, which is a change from the situation reflected in the answer to the questionnaire. Our local business is handled entirely in our own cars. None of our cars move in interstate traffic. We serve about 100 patrons but only 25 receive freight regularly throughout the year. We serve 22 private sidings (Tr. 622) and 4 public team tracks The railroad does not own stock in any of the industries and none of the industries own stock in the railroad, but the owners of the controlling interest in two of the industries served, the Sayles Finishing Plants, Inc., and the Lorraine Manufacturing Company, also own the controlling stock interest in the railroad. Our other patrons have no interest in the railroad. 85% of our traffic comes from the two plants I have named. The railroad is a party to through rates on all interchange traffic (Tr. 623). Prior to May, 1902, we settled car hire on a mileage basis with some of the roads, but many did not bother to collect and it was understood that the New Haven would collect [fol. 161] nothing from the Moshassuck Valley. From May 1, 1902 until Federal control we paid straight per diem and during Federal control and the guaranty period we paid per diem with two days' free time. From September 1, 1920 to June, 1922 we paid per diem without free time, but these charges were readjusted in accordance with the findings in our Divisions Case (Tr. 624). We have been operating under the Birmingham Southern rules since September 1, 1920. In 1921, we applied for membership in the American Railway Association, but when we found that membership would not entitle us to reclaim we withdrew it. The road is a party to the National Car Demurrage Rules and assesses demurrage and retains it when collected (Tr. 625). The elimination of per diem has had the revenue effect the Commission apparently intended, to take care of the revenue needs. I have prepared a statement to show this.

(Document received in evidence as Exhibit No. 33.)

Exhibit 33 shows operating income and expenses during the 5 years, from January 1, 1922. to December, 1926, in-

cluding an analysis of operating income, operating expense, net operating income, depreciated value of property devoted to common carrier purposes, amount necessary to give a 6% return, and amount by which our earnings were greater or less than a 6% return (Tr. 626). The value used is the value found by the Commission with subsequent additions, less depreciation. I have another statement showing results of operation if straight per diem had been paid.

(Document received in evidence as Exhibit No. 34) (Tr. 627.)

The reduction in car detention could be determined by dividing the answers to question 10 in the answers to the questionnaire for the month shown into the answers to question 11 for the same month. It has been reduced substantially. The approximate reduction is from 3/15 days per load in 1920 to 1/77 days in 1925 (Tr. 628). Average detention has been substantially reduced under the Birmingham Southern rules, due partially to the installation [fol. 162] of additional tracks to facilitate interchange rearrangement of schedules, personal solicitation among patrons, and partially through additional methods employed by the railroad to insure prompt movement of cars. If we had had the extra trackage when we were on per diem, our detention would have been reduced slightly but not to the extent that it has been reduced (Tr. 629). Operating under the Birmingham Southern rules we have been able to enlist the aid of our industries. The reduction is due to effort on the part of the railroad because it solicits the effort of the consignees in releasing cars. It is probably due to the psychological factor of our being able to tell them that we have this free time allowed us under the Birmingham Southern rule, and ask them to build up credits to be used as offsets against any debits, whereas under the per diem rule they would know the charge would be the same for us (Tr. 630). The railroad handling is substantially the same, but we have reduced the time through cooperation of the consignee. The New Haven also cooperated in effecting quicker interchange.

Cross-examination:

We had the uniform demurrage tariff in effect prior to the time the Birmingham Southern Rules went into effect (Tr. 631). I consider the Birmingham Southern basis as an incentive to handle cars quickly because we wish to build up credits to be used against debits. We were just as anxious under per diem to get rid of cars and save $1 a day, but we could not get the same cooperation. The time is reduced as the result of quicker action on the part of consignees and because of our own ability to handle cars more rapidly (Tr. 632). We were just as anxious to get rid of the cars before as we are now. The amount we save in car hire has changed our road from a deficit basis to a profit basis. All of our service is now performed under a divi- [fol. 163] sion of through rates, and we perform practically no switching service under switching tariffs (Tr. 633). All of our interchange traffic is handled on through rates in which we participate on an arbitrary basis. We have practically no terminal switching under a switching tariff, and movements on our own line are under a local tariff. Our cars do not go off our rails and are sufficient for our local service (Tr. 634). We have not used any foreign line equipment for local service. Our coal is bought on other lines and comes in cars which are returned to the New Haven. My impression is that we paid no car hire on those cars (Tr. 635). 1.77 days is slightly less than our average detention. The 4 months used are a lower average than any other combination I could pick out, but are representative of general conditions (Tr. 636). They show a slightly lower detention (Tr. 637).

(Document containing summary and detail of car detention on the Moshassuck Valley from September, 1920 up to the end of 1926, received in evidence as Exhibits No. 35.)

On Exhibit 35 I have designated as a saving to the New Haven Railroad the difference between the days that we have actually used the cars and the days that we could have used them without paying for them (Tr. 638). In the total shown in this exhibit, under the heading "Car Days", Sundays and holidays were included. We are entitled to hold a car for three days without paying for it if we need it. Under the caption "Savings" in this exhibit we do not intend to say that we were actually saving the New Haven

any money (Tr. 639). We only wanted to show that we were handling cars efficiently and taking less days than we could have taken had we needed them. I do not think our free time ought to be cut down because we may not always get the same cooperation from our patrons. Our free time should be based upon our ability to get cars released to our connections. If our consignees did delay cars we would [fol. 164] collect demurrage and make money out of foreign cars (Tr. 640). It is not my position that I ought to have the foreign line equipment for nothing. We would be willing to pay the New Haven for foreign line equipment if our divisions were increased, but we are not willing to pay for such equipment unless they are increased (Tr. 641). We have no means of forcing our shippers to return cars to us in less than the two days' free time allowed under the demurrage tariff. In getting the average detention there may have been some cars held, 3, 4 or 5 days, but we average our cars in arriving at debits and credits under the Birmingham Southern Basis (Tr. 642).

HALSEY MCGOVERN was called as a witness [illegible], being duly sworn, testified as follows:

I am a Traffic Consultant and have been engaged in traffic work for 22 years (Tr. 649). My testimony is addressed to the Skaneateles Railroad Case, Docket 16546, which is being heard in the general proceeding. The Skaneateles Railroad is in Onondaga County, New York and is five miles long. Its only connection is with the New York Central at Skaneateles Junction (Tr. 650). It owns no interchangeable freight equipment, and all cars received from the New York Central go back to it. The Skaneateles owns three locomotives, four flat cars and three pieces of passenger equipment, and is capitalized at $100,000 and has an investment of over $211,000 with a slight bonded indebtedness. It is a nonsubscriber and pays per diem without free time or reclaim. It is not industrially owned (Tr. 651). It does not participate in joint through rates and has its own tariffs to the junction. It is a Class III Railroad. I have prepared an exhibit showing its total railway operating revenues and expenses and its net revenue and operating ratio for eleven years up to 1926.

(Document received in evidence as Exhibit No. 36.) (Tr. 652.)

The physical property is in good order and the railroad [fol. 165] is operated economically. During the eleven year period, the net revenue has ranged from $7,999.54 to $32,332.17 (Tr. 653). Car hire is to be deducted from these amounts as it is a non-operating expense. The road is primarily a freight road doing little passenger or express business (Tr. 654). Over the eleven year period the freight revenue of $717,007.36 was 80.49% of all operating revenue. I have an exhibit showing total railway operating revenues, freight revenues and ratio of freight revenue to total revenue for the eleven year period.

(Document received in evidence as Exhibit No. 37.)

The freight business of the road is almost entirely joint haul traffic (Tr. 655). The local traffic is negligible. I have figures in the form of an exhibit showing the breakup of the road's 1926 freight revenues (Tr. 656).

(Document marked Exhibit No. 38 for identification.)

The figure of $81,386.73 is the aggregate freight revenue of the railroad for 1926 (Tr. 657). In the final analysis the road's freight traffic was about 95% joint haul traffic.

(Exhibit No. 38 for identification received in evidence as Exhibit No. 38.)

The result of the road's effective and economical operation is eaten up by car hire expense to a considerable extent (Tr. 658). I have a statement showing net revenue from railway operation for the eleven year period compared with car hire expense, interest on debt and taxes.

(Document received in evidence as Exhibit No. 39.)

Car hire expense was 55.91% of the net revenue and was almost twice as great as taxes and interest combined. Taxes are more or less stationary and the interest is growing less but the car hire expense presents seriously large and distressing totals (Tr. 659). In 1923 and in 1925 the car hire expense ate up practically all of the road's net results from its commendably low operating ratio, and in 1922, 1924 and 1926 the car hire expense ate up considerably more than

half of the road's results of careful and sound operation. I have a small blue print map of the Skaneateles (Tr. 660).

[fol. 166] (Document received in evidence as Exhibit No. 40.)

On the map the Skaneateles is shown in red and the New York Central in orange. The switches, sidings and spurs of the road are more than 50% of the length of the road proper (Tr. 661). There are 2,420 feet of switches, spurs and sidings which have not been designated by number on the map. The elevation of the road rises from 610 feet at Skaneateles Junction to 890 feet at Skaneateles (Tr. 664). The first train leaves the village at 6:50 A. M. and arrives at the junction at 7:10 A. M. It leaves the junction at 7:45 A. M. and arrives at the village at 8:05 A. M. (Tr. 665). Shortly after this a gathering of switching and distributing service is performed at the industries. The same service is performed throughout the afternoon. The train then leaves the village at 5 P. M. (Tr. 666) and leaves the junction on the return trip at 6 P. M. (Tr. 667). The trains between the village and the junction make no intermediate stops to pick up loads or drop empties; they carry only such village proper cars as may be rush, or empties wanted back at the junction. They pick up empties on the return trip for loading at the village. The intermediate industries are served by the trains that operate all the morning and afternoon. I have prepared an exhibit showing a comparison of the car hire expense of the road with its freight revenue, and also showing the *the* percentage ratio of the per diem to the freight revenue and here indicated the per diem rate and time allowances, if any (Tr. 668).

(Document received in evidence as Exhibit No. 41.)

For the eleven year period the ratio of car hire of $112,330.80 to freight revenue was 15.66%. In 1921 the road was given credit for adjustments made on per diem paid during federal control, and in 1919 and 1920 (Tr. 669) the basis is shown upon which adjusted settlements were ultimately made. Except from April 1, 1918 to September 1, 1920, the road has paid per diem without any allowance. A comparison of the car hire expense for 1919, 1920 and 1921 with that of 1924, 1925 and 1926, showing a large increase

[fol. 167] in the latter years, is indicative of what the difference between the prevailing bases and a moderate rate of pay with time allowance means to this road. We had two days free time from March 31, 1918 to the end of the year (Tr. 670). From March, 1914 to March, 1918 no free time was allowed (Tr. 671) but there were three varying day rates. Free time was allowed up to May 1, 1919. The first evidence of free time was that it commenced April 1, 1918. The date April 19, 1918, in the complaint may be a typographical error (Tr. 672). The rates shown in Exhibit 41 for 1920 of 60 cents with two days free time to August 31st; then 90 cents and no free time, September and October $1.00 differ from those in our complaint because the bases shown in the exhibit represent the figures as ultimately settled. 1921 represents an accumulation of settlements on the revised bases and accounts for the low car hire expense in that year (Tr. 673). The exhibit shows the settlement in 1920 as a result of the Commission's decision in Finance Docket 67 so that the heading of Exhibit 41 is wrong. I have prepared a statement showing for 1916 to 1926 the operating expenses of the road compared with car hire expense for each year together with the percentage ratio (Tr. 674).

(Document received in evidence as Exhibit No. 42.)

Compared with general operating expenses, the car hire expense bears a ratio of 16.28 to 100; for four of the eleven years the ratio was over 20 per cent; in 1925 it was 22.25 per cent. I have also made some per diem expense comparisons based on tonnage.

(Document received in evidence as Exhibit No. 43).

Exhibit No. 43 shows the number of tons of revenue freight handled by the road for each year during the eleven year period (Tr. 675). The yearly tonnage, except for 1921, has been in excess of 100,000 tons. The car hire expense for the period was equivalent to 8.12¢ for every ton handled out of an average per ton revenue of 51.88¢. I have prepared by months for the year 1925 a statement of loads [fol. 168] and empties inbound and outbound handled by the railroad.

(Document received in evidence as Exhibit No. 44.)

The exhibit shows a separation of the inbound and outbound record (Tr. 676). The exhibit shows a total of 7,484 loads inbound and outbound upon which the Trunk lines enjoyed a line haul because of the existence of this short line road. It is impractical for a one junction road to develop evenly balanced tonnage, the preponderance is one-way tonnage. On this road 64.22% of the loads are inbound. This is true because of the nature of things. Coal and raw materials necessary in the production of articles manufactured on the road furnish more cars than does the outbound product. This is in part an element that must be borne in mind in the matter of per diem for this short line. It is impossible for the road to escape an extra per diem burden because of having only one outlet (Tr. 677). Exhibit 44 shows the total of the inbound and outbound hauls performed by the railroad but does not take into consideration the extra service performed in making the hauls, such taking care of whatever pull of empties and loads awaiting at the junction. It is conservative indeed to state that the road performed at least twice as many shifts and movements as are represented by the 10,419 in and out hauls, while all this service was being performed, but it was required to pay $16,221 in per diem for the privilege of performing the service in the interest of the trunk lines. I have a similar exhibit along the same lines for the year 1926 (Tr. 678).

(Document received in evidence as Exhibit No. 45.)

There was a slight increase in the business in 1926 over 1925, except that the 1926 tonnage was less balanced. While the short line was performing a total of 10,608 in and out hauls of cars and performing this extensive originating and destination service for the benefit of the trunk lines, it was required to pay $13,094.00 in per diem on these cars (Tr. 679). I have prepared an exhibit showing the aver- [fol. 169] age cost per car of per diem to the Skaneateles for 1925 and 1926 (Tr. 680). I cannot state in a few words what I had in mind when I said that service was performed for the benefit of the trunk lines. The opportunity of making expenses and a fair return is not present in a little five mile switching or delivering or assembling service, but the cream of the business is in the line haul, such as for instance the New York Central enjoys on the business that is

handled to and from the Skaneateles road (Tr. 681). I claim that since the Skaneateles has practically no local traffic, the freight hauled by it on its own lines is for the benefit of the New York Central. It performs practically a terminal service which is generally accepted as the most difficult and expensive service. The road has not declared a dividend in I suppose twenty years. In my exhibit 46 I have shown the number of cars sent to the Skaneateles in each month of 1925 and 1926, together with the per diem bill for the month and the total per diem billed against the Skaneateles for the cars sent in (Tr. 682). The per diem expense for 1925 averaged $3.12 and in 1926 $2.47. The total shown is for loaded and empty cars. I have prepared an exhibit showing a complete per diem record on 150 loads recently handled by the Skaneateles (Tr. 683).

(Document received in evidence as Exhibit No. 47.)

The exhibit covers the year 1927 and shows car number, origin, date the car was received by the Skaneateles, how it went back to the New York Central, date each car was released to the Skaneateles, and the number of days that road had the car both on the inbound and outbound (Tr. 684). The exhibit also shows the inbound revenue and per diem. The foreign line per diem is represented by the waybill dates plus two days for loading. The exhibit also shows information as to outbound revenue with the Skaneateles per diem. No per diem is shown for the foreign line movement outbound because of the difficulty of tracing the car. [fol. 170] The freight revenues of the Skaneateles on each car are also compared with its per diem expense (Tr. 685). The first car was detained on our road 13 days and we assessed demurrage on it under our local tariff which provides two days free time, $2 for the next 5 days, $3 for the next 3 days and $4 thereafter. The exhibit does not include the demurrage we collected. By foreign per diem in this exhibit I mean all per diem other than the Skaneateles (Tr. 686). The foreign per diem figures do not include per diem on inbound or outbound cars, after the Skaneateles received or delivered them. The foreign per diem of $4 in the case of the first shipment under the heading "foreign" represents the difference between the waybill date at origin subtracted from the date the car was charged to the Skaneateles at the junction, plus two days for loading on an

average. On the third car in the exhibit which shows total car days against our road of 11, we paid $3 per diem on the inbound but the car was held longer. It is exceptional (Tr. 687). Some demurrage was assessed on that car. An average of $3.57 per diem was paid by the Skaneateles on these 150 cars. The comparative figures on the Skaneateles per diem and foreign line per diem shown is the only instance where we have a sound basis for comparisons of per diem, that is, on the per diem on the inbound shipments, I would point out that in addition to this Skaneateles per diem being generally and relatively higher than the foreign line per diem and being in some instances identical in amounts with the foreign line per diem, there are fifteen instances wherein the Skaneateles per diem is actually higher in amount than the foreign line or trunk line per diem. Line haul services and revenue are the cream of the transportation business (Tr. 688). There are several small paper mills on the Skaneateles; waste paper; paper stock or rags comes to these mills from New York City or vicinity. On the first car of that sort, item 5 in the exhibit, the Skaneateles paid $7 per diem on a two mile haul, while the [fol. 171] New York Central had a per diem expense of $6 on a 307 mile haul. I do not know how much demurrage we got on that car (Tr. 689). I could not say whether or not the per diem was offset by the demurrage. Under our tariff we would get $10 demurrage which is more than the per diem, so that we got more out of that car than we paid for it. I would not say that we got benefit. Every car they have got under demurrage (Tr. 690) in my judgment is an expense, since it requires incidental switching even after cars are placed, because of the hilly country and the physical peculiarities of the railroad necessitating frequent movement to accommodate other cars (Tr. 691). We think the Trunk lines ought to take into consideration the fact that we are performing an assemblying service for them, just the same as the per diem reclaim road is. We are performing it under much more severe operating difficulties. I will furnish as revised Exhibit No. 47 a statement similar to Exhibit 47 by including the demurrage collected on each car (Tr. 692). I am not sold on the idea that the extent of demurrage over per diem shown here represents a net profit on these cars. Considering demurrage, there is the element of risk. In this particular layout there is a very

substantial difference in expense of operation. Every car detained on this little road any excessive amount of time increases cost of operation. I do not think the New York Central should insure the Skaneateles against risk when cars are on sidings (Tr. 693). I mean that when demurrage is collected it does not mean that the road has made money on a car (Tr. 694). On the car shown in item 17, Exhibit 47, assuming the New York Central received the line haul, it paid $4 per diem on a 307 mile haul while the short line had $7 per diem. In item 20, the New York Central had a line haul of 307 miles with per diem of $5 while the short line paid $7 (Tr. 694). Exhibit 47 was prepared on the basis of a careful check of inbound loads received by the [fol. 172] Skaneateles in the first eight days of February, together with a similar check on outbound loads. Private cars were excluded and no cars empty inbound and loaded out were included. It so happened that during this period practically all, if not all, such empties in and loads out were private cars (Tr. 695). I have another exhibit showing a comparison of car hire expenses on the 150 cars in Exhibit 47, on three different bases.

(Document received in evidence as Exhibit No. 48.)

First, I have shown the $535 actually accrued on straight per diem without free time or reclaim (Tr. 696). Second, I have shown per diem on the same cars under the Birmingham Southern basis, and third, what would have been the per diem accruals on the basis of three days reclaim on cars received loaded and returned empty or received empty and returned loaded, with six days on cars loaded in both directions, with Sundays and holidays deducted. Under the per diem plan, if the per diem on the 150 cars was extended through the year, we would pay $18,921; under the Birmingham Southern basis we would pay ~~$141~~, and on per diem with reclaim would pay $1,466.90 (Tr. 697). This third basis has advantages to it which should probably appeal to the Commission and the trunk lines themselves as a fair solution of the per diem burden under which the Skaneateles road at present lives. In this basis we are adhering to the A. R. A.'s dollar rate for the future. The basis does not exceed in reclaim any excessive allowances. From the standpoint of both the short line and the trunk lines, it would probably be more readily and less expensively kept

as to records than the Birmingham Southern basis or any approximation thereof. From the trunk line's point of view it would seem to me it should have an appeal in that, if granted, it would be coupled with a readjustment of the demurrage situation on the Skaneateles Railroad in such a way as to tend towards an even more prompt handling of [fol. 173] cars by shippers on that road than exist today. I mean by that that if by the adoption of the basis in this third plan, the Skaneateles is relieved entirely or to a considerable and substantial extent from the present per diem burden, it would undertake to so readjust its demurrage rules and charges as to, first, pass on this saving to its shippers and consignees, and, second, would thus in our judgment be improving the entire situation both from the standpoint of its shippers, from the standpoint of the trunk lines, and from the standpoint of the Skaneateles road. At the present time our demurrage rates are below the uniform demurrage rates (Tr. 698). If we can get per diem relief in this case, we would revise our demurrage rates in accordance with the uniform rates. On Exhibit 48 I have used the 150 cars dealt with in Exhibit 47. On the Birmingham Southern basis, as shown in Exhibit 48, item 2, I would have paid $4 per diem on those 150 cars (Tr. 699).

Cross-examination:

The Skaneateles is a member of the American Short Line Railroad Association. In 1926, 75% of our inbound and outbound movement was loaded both ways (Tr. 700). The Skaneateles gets some revenue on 75% of the cars that come to it and go back, counting each car twice as a car in and a car out. We have our own demurrage tariff (Tr. 701).

Mr. Hitt: We are willing to stipulate that the road's demurrage and other tariffs may be considered in evidence in this case.

The Witness: We are asking for the Birmingham Southern Rules, or an approximation thereof, in this case; that basis is an average demurrage basis (Tr. 702), although I would not call it demurrage, which, strictly speaking, is settlement between shippers and carriers. I am fairly familiar with the Birmingham Southern Rules. The complainant is asking for the Birmingham Southern basis or

[fol. 174] the alternative basis, which is the third plan stated in our last exhibit (Tr. 703). In substance what the complainant is asking for is substantial relief from its present per diem burden. We are leaving the medium through which that is to be effected up to the Commission (Tr. 704). The Birmingham Southern basis is a modified average agreement for demurrage applied to car hire settlements. I will furnish a statement showing demurrage collected by the Skaneateles since January 1, 1920 (Tr. 705). The Skaneateles has only local rates published by it and with which the New York Central has nothing to do. The New York Central receives no revenue under them and they can be increased or decreased by the Skaneateles without concurrent action by the New York Central (Tr. 706). That is with the reservation that any change would have its beneficial or adverse effects upon the New York Central. For instance, if they made such a change in their proportion to the junction as to close up mills there, or any other disastrous effect on the tonnage that goes to these points, or originated at those points, that would of course adversely affect the New York Central and its revenues. This is more than a theory. It is a very practical matter. I have no proof of that because it is something that would have to be applied in the future. The demurrage charges of the Skaneateles can also be increased without action by the New York Central. We will increase them if we get this relief as that will benefit the shippers by giving them an incentive (Tr. 707). We will put the shippers on an average agreement with increased demurrage charges, which I think will reduce the amount of the demurrage. My thought is to increase the charges so as to increase the incentive to get the cars out; it will be an increase in the demurrage rate but they may accumulate credits (Tr. 708). My idea is that the National Demurrage Rules will result [fol. 175] in quicker movement of the cars by the consignee, but I would not want to take the gamble of doing that now to save per diem. The road under the present absence of reclaim on free time does not accumulate credits, and if we reduce detention by shippers they reduce the road's demurrage revenue, but it makes no proportionate reduction in its per diem expense (Tr. 709). It would also reduce its per diem by $1 a day. I do not consider demurrage the road receives as money in pocket, but it does tend to reduce

per diem. We do not put the average demurrage agreement in at the present time to reduce car hire expense because the road does not think they could clear unless it got substantial relief from this per diem coupled up with demurrage (Tr. 710). Demurrage which we collect operates to materially reduce the per diem we pay, and I think that if we were on the average agreement it would increase the ratios one to the other. The Skaneateles has never had an average agreement with any of its shippers, but the road has applied its judgment based on past experience as to the performance that the shippers and receivers have given. I do not think the average demurrage agreement would have any effect on the situation (Tr. 708). To illustrate in Exhibit 47 one car was held on our road for eleven days, as there is no incentive under the present arrangement for shippers to get cars back in one day. I do not think this is a defect in our demurrage tariff. Under our proposal for the average demurrage plan, the shipper would have an incentive because he would offset credits against debits, but now when he gets out within the free time, he does not have any offsetting credit within the two days. We are now getting demurrage on all cars detained beyond 48 hours, and under the average agreement the consignee could offest debits against credits and relieve him from paying as much demurrage as he now does (Tr. 712). Car hire would then be in a higher ratio to demur-
[fol. 176] rage than it is now. The Skaneateles has no interchangeable equipment and all its business is billed from the village. There is no freight station on the line until we get to the village. The road is really a string of mills (Tr. 713). Traffic from the industries is billed at the village where the freight house is. The junction with the New York Central is at Skaneateles Junction and the village is at the other end of the line (Tr. 714). Traffic from our track No. 3, Glenside Woolen Mills, shown in Exhibit No. 40 is billed from the village. About $400 or $500 revenue per year out of about $81,000 was derived by the Skaneateles from local traffic hauled in cars delivered to it by the New York Central (Tr. 715). The Skaneateles has no freight station facilities at the junction. The industries between the junction and the village do all their billing through the agent at the village, although the cars are not pulled to the village (Tr. 716). Bills of lading are signed

by the agent at the village. The engine starting from the village picks up the traffic along the road on which billing has been issued. Some people would say that the freight rate on these shipments is computed on a switching basis, as a practical matter. We have two specific tariff charges from each mill (Tr. 717) to the junction. The mills are listed as non-agency stations and the general practice is that all this billing is headed up and handled by the agent at the next more distant station. I know nothing about a contract between the Skaneateles and the New York Central covering the station facilities of the New York Central at the junction (Tr. 718). I know there is an agreement as to interchange at the junction. The document handed me seems to be a copy of what I have seen (Tr. 719). I do not know whether the agreement I saw is identical with this one or not (Tr. 720). I do not know whether the Skaneateles has paid per diem without protest prior to its com- [fol. 177] plaint filed in this case, but the president told me he has never been satisfied with per diem arrangements; that he felt all along that it placed an undue and onerous burden on him. I do not know whether the protest was ever made but the New York Central's per diem bills are b-ing paid now (Tr. 721). I understand the bills are on the American Railway Association basis. The Skaneateles is not industrially owned. I am generally familiar with the A. R. A. per diem rules (Tr. 722), I would assume that under Rule 6 the New York Central would have to pay per diem to the foreign roads owning the cars, unless they have some special agreements, and that would be so as to cars delivered to the Skaneateles. I think the figures for 1926 shown in Exhibit 38 are fairly representative. (Tr. 723). In Exhibit 41, the differences in car hire expense and freight revenue in 1925 and 1926 would be accounted for by the character of the traffic, such as coal or wood pulp. Traffic that loads heavy produces better revenue per car (Tr. 724). In speaking of the operating conditions of this railroad, I had in mind that under the present rules a line performing industrial switching, if a subscriber, receives a per diem reclaim, I presume on the theory that it is performing a service out of which it cannot get much revenue. It is a switching service performed for you. My thought here is that these people are performing substantially similar service, except that it is more difficult, as to the physical

layout, than an ordinary switching road, and they are performing it primarily in the interest of their trunk line connections, principally the New York Central. The Skaneateles is a common carrier. If the primary purpose is to make money for the Skaneateles that purpose has not been fulfilled. They have been carrying too much per diem expense, I presume, for one thing. (Tr. 725). It takes more than an hour to operate from one end of the railroad to another. The service of gathering up the traffic from the mills and taking it to the junction takes all morning over [fol. 178] the 5 miles of track. You have in substance an industrial destination line that is furnishing tonnage (Tr. 726). We think our service is comparable to that performed by reclaim switching roads. I think it fair to say that we are performing more difficult assembling and distributing service in the interest of the trunk lines than the ordinary per diem reclaim switching road.

Mr. Towner: I have a telegram dated New York yesterday, reading as follows:

"Hon. Alfred P. Thom, Association of Railway Executives, Transportation Building, Washington, D. C.:

"The only counsel authorized to represent the Central Railroad Company of New Jersey and the Delaware, Lackawanna & Western Railroad Company in the litigation now pending relating to the code of per diem rules in the American Railway Association is the counsel retained by that association. No one else is authorized to appear for these companies at the hearing before the Commission.

"(Signed by) J. M. Davis, President, Delaware, Lackawanna & Western Railroad Company, and R. H. White, President, Central Railroad Company of New Jersey." (Tr. 727.)

G. C. Barnum was called as a witness and, being duly sworn, testified as follows:

I am Chief Clerk to the Superintendent of Car Service of the New York Central and have been since 1918 (Tr. 728). Car hire settlements with the Skaneateles come un-

der my jurisdiction and I have examined the records covering the matter. The New York Central is a party to the American Railway Association per diem agreement and has been since March 1, 1920. There is a contract between the New York Central and Skaneateles (Tr. 729). I have a true copy of the contract.

(Document received in evidence as Exhibit No. 49.)

Article second covers car hire with the Skaneateles (Tr. 730). It provides that the Skaneateles is to pay the New York Central car rental in accordance with the rules of the [fol. 179] Association on railroad owned cars, and this agreement is now being followed, and has been adhered to at all times since March 1920, except as adjustments during the guarantee period affected it. Either party may cancel this contract upon 60 days' written notice (Tr. 731). The Skaneateles has not served any such notice. Under the contract it has jointly used the facilities of the New York Central at the junction since March 1, 1920, and has paid for them in accordance with the contract. During the guaranty period the Skaneateles originally paid car hire on the basis of the agreement (Tr. 732). There was an adjustment covering this period to a 60¢ rate and two days free time because of the contract signed by the Director General (Tr. 733). All notices of changes in the per diem rate were served upon its short line connections by the New York Central; including the notice of March 1, 1920 that the rate thereafter would be 90¢ per day.

(Said notice received in evidence as Exhibit No. 50.)

A copy of Exhibit 50 was sent to the Skaneateles (Tr. 734). A notice of December 11, 1920 that the per diem rate would be increased to $1 on November 1, 1920, was also sent to the Skaneateles.

(Copy of said notice received in evidence as Exhibit No. 51.)

The first protest by the Skaneateles against the payment of per diem on the Association basis was made in a letter of July 17, 1924 (Tr. 735). No complaint had been made up to that time. I have prepared a statement showing the various per diem rates in effect under the Association per diem rules from July 1902 to the present time.

(Document received in evidence as Exhibit No. 52) (Tr. 736).

I have prepared a statement showing the average detention per car by the Skaneateles from September 1, 1920, to January 1, 1927.

(Document received in evidence as Exhibit No. 53.)

Exhibit 53 shows the average for four months only of the year 1920. The records prior to September 1, 1920, [fol. 180] were destroyed (Tr. 737). The exhibit is based on cars used, although some of them may have been loaded in both directions. It is based on cars interchanged (Tr. 738). In 1926, 5293 cars were delivered to the Skaneateles (Tr. 739). They paid us $13,094. If they had had two days' free time they would have paid us $2,508 or an average of 47¢ per car. If they had had three days' free time, 6 days round trip, they would have paid nothing since their average detention is only 2.76 days per car (Tr. 740). Under such an arrangement, the Skaneateles would, I assume, be relieved of all car hire when cars are delivered to it by the New York Central. I think the same result would obtain during the entire period covered by Exhibit 53, and if the settlements had been made on a monthly basis, it would be the same, more so perhaps than it would if on a 6 months basis (Tr. 741). Exhibit 53 shows average detention of 3.92 days from February, 1923, but with three days' allowance on each loaded car they would have six days on cars loaded in and out because 50 per cent of the cars which go in loaded come out loaded. My answer is based on averages for the month. I have not taken into consideration that there might be some car there which did not have enough credits to offset the debits (Tr. 742). I have prepared a statement showing the number of cars delivered to and received from the Skaneateles by the New York Central between April 1, 1920 to February 1, 1927, divided between loaded and empty cars.

(Document received in evidence as Exhibit No. 54.)

The records prior to April 1920, have been destroyed. 72% of the cars delivered in the period covered by the exhibit were cars not owned by the New York Central (Tr. 744). On these cars the New York Central is obliged to

pay to the owners per diem at the American Railway Association rate without free time or reclaim during the time those cars are on the Skaneateles. The New York Central actually paid the per diem on those cars as a matter of fact. It also is required to assume the expense of reporting and accounting for these cars while they are on the [fol. 181] Skaneateles and makes no profit from the per diem (Tr. 745). There is no method by which the reporting and accounting expense can be recovered by the New York Central from anybody. I have prepared a statement showing the short line railroads connecting with the New York Central, which settled for per diem upon the same basis as the Skaneateles.

(Document received in evidence as Exhibit No. 55) (Tr. 746).

As shown in Exhibit 54, in January, 1926, the New York Central handled a total of 725 cars to and from the Skaneateles. The complainant showed 812 cars in that period. I cannot account for the difference, but, so far as I know, our figures are correct (Tr. 747).

Mr. McGovern: Our record is a record of cars on lines at the beginning of the month; whereas, the New York Central figures are those of cars interchanged (Tr. 748).

The Witness: I am familiar with the decision of the Commission in the Marcellus & Otisco Company Case, where the New York Central per diem arrangement was the same as that with the Skaneateles, and the Commission approved that arrangement (Tr. 749). The conditions on the Marcellus & Otisco and the Skaneateles are substantially the same. Exhibit 55 shows the length and character of service of each road listed and the basis of settlement for car hire. Prior to federal control, the Skaneateles paid straight per diem without free time, and there has been no free time allowance since September 1, 1920 (Tr. 750). I have prepared a statement showing the short line railroads connecting with the New York Central, which settled car line hire on a per diem basis with no free time, at all times prior to, during and since federal control.

(Document received in evidence as Exhibit No. 56.)

Eight roads are shown on this exhibit and they are now settling on the American Railway Association basis with-

[fol. 182] out free time. The average demurrage agreement has never been in effect between the New York Central and any of them (Tr. 751). I have also prepared a statement showing the connections of the New York Central with which car hire arrangements have been made providing for free time. Two roads are on this exhibit.

(Document received in evidence as Exhibit No. 57.)

Both of these roads are now members of the Association and the arrangement has been discontinued (Tr. 752). I have also prepared a statement listing connections of the New York Central with which car hire settlements are made on the Birmingham Southern basis (Tr. 753). Seven roads are shown (Document received in evidence as Exhibit No. 58.) The Bay Terminal, shown on this exhibit has over 300 tank cars used exclusively by the Sun Oil Company. Per diem is paid on these cars as they are considered as railroad cars (Tr. 754). This exhibit covers all connections of the New York Central with which car hire settlement is made on a basis other than Per Diem Rule 6 and demurrage basis. The Commission prescribed the basis in all but two instances, and in those instances the New York Central voluntarily adopted the same basis. Our Legal Department advised us this would be proper (Tr. 755). We consider Bay Terminal cars as private cars, as they are not subject to car service rules, are handled on orders of the Sun Company and are used exclusively by it. The cars are marked "Bay Terminal," but the Sun Oil controls the Bay Terminal Railroad. Per diem is paid on these tank cars (Tr. 756). That is in accordance with the decision of the Commission. The New York Central does not collect per diem on the Association basis for cars delivered to the Bay Terminal. The Bay Terminal tank cars are suitable for general interchange but are not common service cars which can be used by anybody (Tr. 757). The Commission's decision determines the basis upon which [fol. 183] the Bay Terminal pays car hire. The New York Central has a demurrage agreement tariff on file with the Commission as its Freight Tariff 4-F, which will be superseded on March 15, 1927 by Tariff 4-G. There is no difference in the average demurrage agreement and Rule 9 as contained in the two tariffs. I have made a copy of the average demurrage agreement and Rule 9 (Tr. 758). (Said

document received in evidence as Exhibit No. 59). The New York Central is a party to the National Demurrage Code. Exhibit 59 is a part of the National Code (Tr. 759). This agreement has not been in effect as to car hire between the New York Central and any other short line carrier since March 1, 1920 (Tr. 760).

Cross-examination:

If line haul railroads were entitled to reclaim, the Skaneateles would receive a reclaim. In that event the New York Central would have to pay the owner of cars for them while they were used by the Skaneateles. If the Skaneateles was a subscriber and would publish its rates in a switching tariff it would be entitled to reclaim. The Niagara Junction Railroad and Indiana Northern, on Exhibit 57, now get switching reclaim as subscribers (Tr. 761), and did during and prior to federal control. The New York Central also allows reclaim under Rule 5 to the other subscriber connections. No special reclaim is allowed to any railroad shown in the exhibits except that under Per Diem Rule 5. I have no knowledge of the Skaneateles having protested against the per diem bills (Tr. 762) other than as I testified as to the letter of July 17, 1924. The Niagara Junction Railroad is allowed reclaim as a subscriber; the Skaneateles not being a subscriber it does not have the privilege. I do not know what the difference is in the operating service as performed by the Skaneateles and the other railroad on the exhibits (Tr. 763). When I said the Skaneateles would be entitled to a reclaim as a subscriber, I meant that it would be allowed reclaim on cars it handled in switching service on a switching charge. I do not know that they could file a tariff cov- [fol. 184] ering all their lines as a switching tariff (Tr. 764). I do not think they could. The switching on which they would receive reclaim would have to be terminal switching. Even if the entire line was within a switching district they would get no reclaim on local cars (Tr. 765). On cars interchanged with the New York Central they would receive reclaim. The Niagara Junction and Indiana Northern are both terminal switching roads. We make no interchange report on cars delivered to a non-per diem connection, but we have a record in our own office. If the Skanea-

teles was a subscriber, we would make the same kind of a record as we do now, and would forward a report to the car owner (Tr. 766). We do not now make a report to the car owner. If we received a car from the Pennsylvania and delivered it to the Skaneateles we would show that initial and number on the P. R. R. per diem report and the total number of days from the date the P. R. R. delivered us the car to the date it was delivered off our line or to the end of the month if it was still on our line; we would say nothing to the Pennsylvania about the Skaneateles. All the Pennsylvania would be interested in would be in getting per diem from the New York Central (Tr. 767). If the Skaneateles was a subscriber, we would make the same report to the Pennsylvania but would only include the time we had the car. Having received our junction reports, the Pennsylvania would look to the Skaneateles for the difference.

Director Bartel: Adjourned to some hour and place to be hereafter announced (Tr. 768).

[fol. 185] Proceedings at Chicago, Illinois, July 26, to July 29, 1927

Director Bartel: The Commission has set for further hearing at this time and place Docket 17801, Rules for Car Hire Settlement and various cases which have been consolidated therewith.

R. R. EVANS was called as a witness and, being duly sworn testified as follows:

I am Superintendent in charge of operation of the Big Sandy & Kentucky River Railway, an incorporated railway (Tr. 777). It is a common carrier in the State of Kentucky, incorporated in 1912 and started operation in 1913. It serves about seven coal mines and four lumber operations and is owned by the Dawkins Lumber Company, having the same general offices (Tr. 778). The book investment of the Company is $996,000. It is a standard gauge railroad and is owned by one of its industries, although it is not the largest producer of tonnage on the road. It connects with the Chesapeake & Ohio at Dawkins, Kentucky. It is 24 miles long with 1.73 miles of switches and

serves approximately 35,000 to 40,000 people (Tr. 779). 66⅔ of the tonnage is coal and the balance lumber.

Mr. Quirk: This railroad has already filed the complaint with the Commission that was pending at the time this general investigation was instituted.

The Witness: The railroad handled 536 cars outbound in January of this year and 20 cars inbound (Tr. 780). The road interchanges between 6,000 and 8,000 cars a year. We run some mixed trains and our passenger revenue runs from $20,000 to $25,000 a year. We own one passenger car and some work equipment but have no locomotives and no [fol. 186] freight cars that are interchanged. We rent our locomotives from the Chesapeake & Ohio and none of our equipment leaves our rails (Tr. 781). The road files tariffs and annual reports with the Interstate Commerce Commission and the Kentucky Railway Commission, but is not a member of the American Railway Association or a subscriber to the Per Diem Agreement. Since we filed our complaint we have refused to pay any per diem, but the Chesapeake & Ohio is holding it out of our junction settlements on the straight per diem basis of $1.00 (Tr. 782). When the railroad was built we had a verbal agreement with the Vice President of the Chesapeake & Ohio not to pay car hire and paid nothing until January, 1919, when we were put on a demurrage basis by the Chesapeake & Ohio. We paid demurrage until 1921 when they put us on the straight per diem basis for the reason that it was according to the rules of the Association. The road has joint rates on coal and local rates on all other traffic. We tried to get some other basis than straight per diem for car hire from the Chesapeake & Ohio but were told that it could not be done under the Association rules (Tr. 783). I think we should have some basis of settlement which would cut down the percentage of car hire to gross revenue because of the terminal character of our service, we even weigh cars and they do not have to go across the hump at Russell, which all the other coal on the Sandy Division does. Our average detention is over two and under three days (Tr. 784). That was a computation we made in 1923 when our detention was about 2.75 days per car. Our situation is not at all comparable to the situation of one trunk line which is the owner and user of a car against another

trunk line which is the owner and user of a car, because since we have no cars we have no balances to apply against per diem (Tr. 785). There has been a surplus of cars for the last five years. Several times we have stored cars for the Chesapeake & Ohio. I do not think it would be policy for these short lines, such as the Big Sandy, under these [fol. 187] circumstances, to buy cars (Tr. 786). My first exhibit is a comparison of earnings and per diem accruals between this road and foreign lines on 20 cars that we traced in January, 1927. It shows the revenue and our per diem accruals and foreign lines' per diem and percentage of per diem to revenue. We received 33% of the revenue and paid 47% of the per diem.

(Document received in evidence as Exhibit No. 60.) (Tr. 787.)

The next exhibit is the same as the other one, except that it covers 536 outbound cars. (Document received in evidence as Exhibit No. 61.) The next exhibit is a summary totalling the two foregoing exhibits. (Tr. 788). It summarizes the 536 cars outbound and the 20 cars inbound.

(Document received in evidence as Exhibit No. 62.) (Tr. 789.)

Our average per diem inbound and outbound is in excess of $3. My next exhibit shows total number of cars, average number on hand one day, gross freight revenue for 1926, and average revenue per day and per car. The next exhibit is substantially the same.

(Said documents received in evidence as Exhibits Numbers 63 and 64.) (Tr. 790.)

Exhibit 64 shows 45.67 average number of cars on line in one day, with gross revenue per day of $622.42 and revenue per car per day of $13.61—that is on all traffic. The $13.61 is gross revenue per car day. Our gross revenue will run about $35 or $40 per car (Tr. 791). The lumber runs to $60 or $65 per car. In the exhibit we had 548 cars on hand at the last day of each month. We divided that by 12, which gives the average number of cars on hand 45.67. We picked out the last day of each month (Tr. 792) and there happened to be 548 cars on each last day. The 548 was the total for each last day of the month, for 12 different months

(Tr. 793). The 548 cars is the total number on hand on the last day of each month during the year. I think these figures are representative. Exhibit 65 is a comparison of the number of system cars and foreign cars in loaded movement; system means our direct connections, foreign cars are other line cars. It appears that we had 6 Chesa- [fol. 188] peake & Ohio cars and 14 foreign cars on inbound loads. On outbound loads we had 497 C. & O. cars and 39 foreign cars, or 90.47 per cent C. & O. cars (Tr. 794). Exhibit 66 is a comparison of our present straight per diem car hire basis for January and per diem with two days' free time; straight demurrage; and mileage at 2¢ and 1½¢ per mile. We paid $1,364 on straight per diem; it would have been $408 on per diem with two days' free time; $891 on straight demurrage, $336.93 at 1½¢ a mile, and $449.24 at 2¢ a mile. Under the modified Birmingham Southern Rules we would have paid practically nothing.

(Said documents received in evidence as Exhibits Numbers 65 and 66.) (Tr. 795)

L. C. Fritch was called as a witness and, being duly sworn, testified as follows:

I am Vice President of the Rock Island Lines. My railroad experience covers about 40 years (Tr. 797). I am a member of the Committee on Coordination of Chicago Terminals and have been participating in the study of traffic in the Chicago Terminal District. That Committee was created by the Chicago roads in 1917 and has functioned since then. It is composed of one or more representatives of each trunk line and each major belt and/or switching line in the Chicago district (Tr. 798). Its executive committee is composed of representatives of the Santa Fé, Belt Railway, Burlington, Rock Island, Illinois Central, New York Central and Pennsylvania. This committee appoints sub-committees which report their findings to the executive committee. All service is without compensation (Tr. 799). The committee has recently made an analysis of the freight traffic in the Chicago Terminal, the analysis covering an area embracing 1750 square miles of territory extending from Waukegan on the north through Eola and

Joliet on the west, to Porter, Indiana, on the east. The Chicago terminal district includes the Chicago switching district which is a district including about 400 square miles of territory (Tr. 800). The Chicago terminal district serves [fol. 189] more than 4300 industries with track connections and the Chicago switching district over 3800 such industries. In the Chicago terminal district more than 7700 miles of track are operated by the steam railroads, and it loads about 4.5% and unloads about 6.4% of all the freight carloadings in the United States. In the Chicago terminal area there are 7726 miles of track, 206 freight terminal and industrial yards, 75 belt and switching roads and 14 industrial railroad yards. The standing car capacity of tracks is 206,820 cars, which represents about 6 days' business. There are 53 inbound delivery and outbound receiving stations down town (Tr. 801). There are 17 transfer houses, 11 universal freight stations, 174 sub-stations and 372 team tracks, with a car capacity of 10,970 cars (Tr. 802). 82,850 employees are engaged in these terminals.

The analysis of this district, made by my committee, was the most extensive analysis ever made and shows that the steam railroads handled 35,000 cars per day in the Chicago terminal district. 87% of these cars have their destination or origin, or both, in the district, and 13% of them pass through (Tr. 803). Of the 87%, 34.5% come from beyond for loading or unloading and 34.5% are loaded within the district for points beyond or unloaded within and moved out empty. 31% move entirely within the district. Of the total number of cars handled, 46% are handled in the district by one railroad and 54% are handled by more than one railroad (Tr. 804). In through movement 14% come in and out over one railroad and 86% are handled by more than one railroad. In local movement, 51% are handled by one railroad and 49% by more than one railroad. Of local loaded cars inbound, trunk line railroads deliver 64.4%, switching railroads 32% and industrial railroads 3.6%. Of outbound local loaded cars, trunk lines pull 62.8%, switching railroads 33.3% and industrial roads 3.9%. Of intraterminal loaded cars, trunk lines pull 28.8%, switching railroads 62.1% and industrial railroads 9.1% [fol. 190] (Tr. 805). Of intraterminal loaded cars, trunk lines deliver 43%, switching railroads 51% and industrial

railroads 6% (Tr. 806). Trunk line railroads are those that haul cars to and from the district and are commonly called road haul carriers. The Belt and/or switching railroads of Chicago are the Baltimore and Ohio Chicago Terminal, Belt Railway, Chicago & Western Indiana, Chicago Junction, Chicago River & Indiana, Elgin, Joliet & Eastern, and Indiana Harbor Belt. The industrial railroads which are owned by the principal industries they serve, except the Chicago Heights Terminal, which is controlled by the Chicago Heights Land Association, are the Chicago & Calumet River, Chicago and Illinois Western, Chicago Heights Terminal Transfer, Chicago Short Line, Chicago, West Pullman & Southern, Illinois Northern, Manufacturers Junction and Pullman (Tr. 807). The Illinois Central now controls and operates the Chicago & Illinois Western. The interchange of cars between railroads is either by direct delivery, by deliver- through clearing yards or delivery through intermediate railroads. Under the first method only two railroads are involved, the railroad making the delivery, which may be an inbound road haul carrier, or a terminal originating carrier, and the receiving railroad, which may be an outbound carrier or a terminal destination carrier. In the second method three railroads are usually involved, one furnishing the clearing facility, one receiving the cars, and one delivering (Tr. 808). In the third method three railroads are always involved, the delivering, the receiving and the intermediate. The movement of traffic requiring interchange within the Chicago terminal district is complex and the accounting between railroads is involved. The committee has attempted to simplify and standardize operating practices to increase efficiency (Tr. 809). The aim of the railroads in Chicago is to give shippers and receivers proper service in the most economical way. That this is done is indicated by the commercial growth of Chicago. Economic service is uppermost (Tr. 810).

[fol. 191] Cross-examination:

I know of no railroad which has not stood back of this program. The figures on cars handled that I gave were for the last six months of 1923. There has been a substantial increase since then. I classified the E. J. & E., as a

belt or switching line (Tr. 811). It does switching business and is also partly a line haul carrier getting line haul earnings. I paid no attention to its ownership in my classification (Tr. 812). That only the very short roads owned by industries should have a differentiation based upon ownership was the classification the Committee thought best fitted every case. I do not know if the E. J. & E. is a party to switching tariffs. I have not gone into the rate feature of the matter. The Manufacturers Junction Railroad is included in the figures I gave (Tr. 813). The report of my committee, giving the detail of the matters I referred to, has been printed and published, but the report is very voluminous (Tr. 814). I said that the trunk lines had capacity for 125,000 cars, the switching railroads for 76,000 and the industrial railroads for 5,300 cars. The total is supposed to cover all standing car capacity in Chicago (Tr. 816). I do not know how much of the 125,000 capacity represents trackage owned. It would be a small proportion. The detailed figures of the committee might show that (Tr. 817). The figures I gave relate to the Chicago terminal district. I do not think the membership of our organization includes anyone outside of the Trunk Lines and the Belt or switching lines (Tr. 818). When I used the term intra-terminal, I meant within the district and not between two terminals in the district. It would include a car originating on the Illinois Central moving over the Belt destined to a point on the Santa Fe, all within the district, and it would include a car from a point on the Illinois Central within the Chicago terminal but without the Chicago switching district to another point on the Illinois Central within the Chicago switching district (Tr. [fol. 192] 820). The intra-terminal movement, to which I referred of cars loaded within the district for another point within or moved empty from a point of unloading to a point of loading, both within, was 9,500 cars or 31%. 39% were loaded and 61% empty. The reason for that is this, Chicago is a greater consuming district than it is a distributing district, and more cars come in loaded than come out empty (Tr. 821). An example of one of the empty movements would be a load of coal coming in and the car going out empty. Anything originating outside of the district is not classified as intra-terminal (Tr. 822). After a car is made

empty, it would certainly find its way back to the carrier that delivered it to the switching line. If a car is made empty on one carrier and moved within the terminal to another carrier, that would be an intra-terminal movement (Tr. 823). If no load was ready for the car after it reached the destination in the terminal and it moved empty on line haul, that would be another movement. Most of our cars move out on line and do not stay within the district. Ultimately empty cars have to be delivered back to the originating carrier, and that carrier takes them out on line (Tr. 824) and they are counted twice, but in this particular analysis every movement is counted once; this particular movement is today counted as an inter-terminal movement and tomorrow may be counted in an out-bound movement on the originating line. If a car came in over the Pennsylvania and was made empty at an industry, that would be a local movement. If it was then taken by the Belt Railroad over to another industry, loaded and moved out to Kansas City or somewhere else, the final movement is a local movement and the intermediate movement is an intra-terminal movement, but is not considered as an intra-terminal movement because it goes out on line (Tr. 825). We counted 9500 cars, 39% were loaded and 61% empty. On loaded intra-terminal movement we counted cars loaded [fol. 193] in the terminal to a point in the terminal (Tr. 826). Our intra-terminal movement represents a car originating and terminating within the terminal (Tr. 827).

F. J. Wasson was called as a witness and, being duly sworn, testified as follows:

I am car accountant of the Belt Railway Company of Chicago and have been engaged in railroad service since 1910. I am familiar with the per diem and reclaim method of car hire settlement and I have also made a study of what is known as the modified Birmingham Southern basis, described by the Commission, which has been in effect in the Chicago district since July 1, 1923 (Tr. 830), particularly with reference to the application of those rules to the Pullman Railroad, Chicago Short Line, Manufacturers Junction and Illinois Northern. I have also prepared ex-

hibits showing the results of the study for the last half of the year 1923 and all of the years 1924 and 1925. The modified Birmingham Southern rules were prescribed for Chicago Short Line, Illinois Northern, Manufacturers Junction and Pullman in 78 I. C. C. 475, effective July 1, 1923 (Tr. 831). The General Superintendents' Association of Chicago made an examination of the records to determine whether the rules accomplish the results sought and were as efficient and economical as per diem and reclaim. Based upon a preliminary study of a six months' period, the Association reached the conclusion that the former per diem plan of settlement should be restored until some practical plan can be worked out for the Chicago district that will overcome the objections pointed out in the order of the Illinois Commerce Commission. This recommendation was sent to the Chicago General Managers' Association and a petition was filed with the Commission to modify its order. The case was then reopened for further hearing (Tr. 832). A special committee obtained data from representatives of the four industrial carriers showing cars interchanged, separated as between classes of switch-
[fol. 194] ing service; per diem detention; additional expense in maintaining records; reclaims that would have been paid to those carriers under per diem; and car hire balances under the modified Birmingham Southern Rules (Tr. 833). My Exhibit 67 shows the number of cars interchanged by direct connections with the four industrial roads (Tr. 834) during 1924. It shows also the class of service in which the cars were engaged. Interterminal service, as the term is used, is that service performed in handling a car which has been loaded on one road in the Chicago switching district and moved to another road for unloading within the same district. Sub-station cars are defined as cars loaded at a sub-station with less-than-carload shipments consigned to points beyond the switching district to be handled at a freight house in Chicago and forwarded to points beyond, and cars loaded at freight houses of road-haul carrier with less than carload shipments originating beyond Chicago switching district, to be unloaded at a sub-station (Tr. 835). Trap cars are cars loaded at an industry with less-than-carload shipments for points beyond Chicago via one road and worked by a road haul carrier at either the city freight house or out-

side transfer point, or cars loaded at a freight house of the road haul carrier destined to an industry in the district. The detention in Colmun 7 of the exhibit is arrived at by dividing the total number of cars other than those in intermediate switching into the total days' detention while on the industrial carriers. The average detention in Column 9 is arrived at by dividing the total number of cars delivered to the industrial common carriers in intermediate switching service by the number of days' detention of such car on the industrial carrier. Sheet 1 of Exhibit 67 shows car hire accruals under the modified Birmingham Southern Rules. Column 1 shows the debits against the industrial carriers; Column 2 the credits earned; and Column 3 the [fol. 195] car hire which accrued on excess debits. The number of credits earned greatly exceeded the debits, but excess credits earned against one carrier cannot be applied in settlement of the accounts of another carrier (Tr. 837). Column 4 shows the charges assessed against the industrial carriers on cars reconsigned or reshipped and cars delivered empty and returned empty which cannot be offset by credits. Column 5 shows the charges against the four industrial carriers on cars in intermediate switching service (Tr. 838). Column 6 shows the total car hire which accrued against the four industrial carriers on all classes of cars. Sheet 2 of Exhibit 67, Section A, shows the expense incurred by direct connection in application of the modified Birmingham Southern Rules for the year 1924. Column 1 shows the total amount of per diem paid to car owners by direct connections for the detention of cars on industrial carriers. Column 2 shows per diem lost on cars owned by direct connections while detained on the industrial carriers (Tr. 839). Had these industrial carriers been on per diem they would have paid to their direct connections the amounts shown in these columns. Column 3 shows the additional expense incurred by direct connections in keeping records, as compared with the per diem plan. Column 4 is the total of Columns 1, 2 and 3. Column 5 shows the amount of car hire accrued against the industrial common carriers. Column 6 shows the total expense to direct connections after deducting car hire collected from the industrial carriers. Column 7 shows total expense for the year 1924. Section B, Sheet No. 2, Exhibit 67, shows expense which would have been incurred by direct con-

nections for detention of cars on the industrial carriers under per diem with reclaim (Tr. 840). Column 1 shows the average detention on all cars other than those engaged in intermediate switching, substation and trap car service; Column 2 the reclaim which would have been paid on [fol. 196] terminal switching service; Column 3 the reclaim which would have been paid on sub-station and trap car service; Column 4 the average detention per car in intermediate switching service subject to per diem reclaim; Column 5 the reclaim which would have been paid on cars in intermediate switching service; and column 6 the total amount that would have been paid in reclaims (Tr. 841). The total amount shown of $358,031.22 if deducted from the $479,641.46 on Sheet 2 of Exhibit 67, shows a loss for the year of $121,610.24 to the direct connections as a result of the application of the modified Birmingham Southern Rules to the industrial common carriers, as compared with the per diem and reclaim plan. In 1924 there was an intermediate switching reclaim in Chicago to roads primarily not road haul carriers. That was a local agreement, but the per diem rules did not provide for reclaim on intermediate switching (Tr. 842). Per Diem Rule 5 authorized this agreement if it was a unanimous agreement, although at variance with the rules (Tr 843). One day's reclaim only was allowed on intermediate switching service. Sheet 3 of Exhibit 67 is a recapitulation of per diem expense of direct connections of the four industrial roads on cars handled in interterminal switching service based on the average detention as shown on Sheet 2 (Tr. 844). Approximately $110,000 would have been paid by the industrial carriers had per diem been in effect and this payment could not have been recovered as no reclaim is allowed in interterminal switching. Sheets 4, 5 and 6 of Exhibit 67 show similar data for the year 1925. In that year approximately $158,000 would have been paid by the industrial carriers to car owners on cars used in interterminal switching service, which, added to the 1924 amount, represents a total of $268,000 (Tr. 845). Sheet 3 of Exhibit 68 shows that approximately $79,500 in per diem would have [fol. 197] been paid by the four industrial carriers under the per diem rules on cars used in interterminal switching service. The Birmingham Southern Rules have not yet

removed the possibility of preference to proprietary industries of the industrial roads, but have practically relieved the industrial carriers of car hire expense (Tr. 846). Sheet 1, Section B, Exhibit 67, shows that the net car hire expense to the four industrial roads in 1924 was $5710, and Sheet 4, Section B shows that the same expense in 1925 was $12,591. Had these carriers been on per diem and reclaim during the same period, their expense for 1924 would have been $110,008.74 and for 1925 $158,298.59. Under the Birmingham Southern Rules they saved $105,000 in 1924 and $145,000 in 1925. These amounts were borne by the direct connections of the industrial carriers (Tr. 847). To get the average detention of 3.22 days per car on the Manufacturers Junction, as shown in Sheet 2, Section B, Exhibit 67, the total number of cars received from and delivered to that road, with certain modifications, were divided into the total per diem days. The figure is not hypothetical in so far as it shows the actual detention of the car on the industrial railroad (Tr. 850). Including all classes of service, the average detention on that road was 2.91 days. In the same year, the reclaim on the Belt Railroad was 3.78 days (Tr. 851). We say that the figures shown are those that would have possibly existed had the American Railway Association made a check. The figure of 3.78 is a figure that existed prior to the time that the Manufacturers Junction was suspended from the Per Diem Agreement, and was not used by the Belt and other railroads in their settlements for the last six months of 1923 and all of 1924 and ~~1925~~ (Tr. 852). The 3.32 used in Column 1, Section B, Sheet 2, Exhibit 67, is to an extent [fol. 198] a figure based upon the hypothesis that the A. R. C. had made a check, had used a certain formula, and had thereby arrived at 3.32. The detention on the Manufacturers Junction, shown in the exhibits, is actual and the figure would in my opinion be 3.22 for reclaim purposes (Tr. 853).

(The Documents described received in evidence as Exhibits Numbers 67 and 68.)

The Commission's order required the payment of per diem on cars of the industrial carriers interchanged with other railroads, and all railroads using their equipment settled on that basis. In 1924, however, the four indus-

trial carriers were enabled, through the application of the modified Birmingham Southern Rules, to move local business on their lines in foreign cars at 5¢ per car day, and in 1925 at 8¢ per car day (Tr. 854). The amount that an industrial carrier would be required to pay for car hire under the per diem rules is merely equivalent to the cost of maintenance, depreciation, accounting, taxes and interest which it would have to bear if it owned the cars used in local and interterminal switching service (Tr. 855). Exhibit 67 shows that in 1924, three of the four industrial carriers required an average of more than three days per car in which to switch cars from their connections to their industries, allow time for loading or unloading and return (Tr. 857). It may be suggested that the free time under the Birmingham Southern Rules should be reduced, but a practical solution does not appear possible, as thus far it has been found impossible to frame a workable rule for computing fractional days under a demurrage average agreement with a progressive rate. Fractions of days can be and are being computed under per diem and reclaim rules. If it were found possible to frame a workable rule to compute fractions of days under the Birmingham Southern Rules, free time would still apply to cars in interterminal switching, while under the per diem rules the industrial carriers would be required to pay per diem with-
[fol. 199] out reclaim (Tr. 858). It is also apparent that the modified Birmingham Southern Rules, by reducing the cost of the use of cars, fails to provide a proper incentive for prompt handling. They were prescribed to eliminate the possibility of preference to proprietary industries of industrial common carriers through the application of per diem with reclaim, but it appears to be impossible to apply these rules to these four industrial carriers without the proprietary industries enjoying over their competitors the preference the rules were designed to eliminate (Tr. 859). They have also proved difficult of application because they do not cover the matter of interchange between two industrial carriers nor any provision to cover detention of cars delivered in error. The Commission should modify its findings and require the four industrial carriers to pay per diem in accordance with the per diem rules of the American Railway Association (Tr. 860). The 2.5 days applied to cars handled in sub-station and trap car service is the

rate established until another is checked in and if the only figure we could use. The 2.91 days on page 1 of Exhibit 67 and the 3.22 days on page 2, are not supposed to represent the same detention; the 2.91 represents all classes of cars loaded and unloaded on the industrial road; the 3.92 represents all cars except those used in sub-station or trap car service (Tr. 861).

Cross-examination:

The figures in my exhibits were obtained on a request of the General Managers' Association to each individual railroad to determine what their performance was under the Birmingham Southern plan. I was chairman of a committee to compile the figures (Tr. 862). We used figures furnished by the Manufacturers Junction Railway which agreed that they were substantially correct. I mean the figures as to the number of days' detention, the number [fol. 200] of cars they handled and the classes of service involved. I think that the same understanding was had with each individual line (Tr. 863). The $97,913.22 shown on Sheet 2 of Section B of Exhibit 67, represents detention of cars in interterminal service and the cost of maintaining records under the Birmingham Southern basis over what it would have cost under the per diem plan. It really represents the reclaim that would have been paid. I do not know of any other factor that could have been in there (Tr. 865). The clerical expense under the per diem and reclaim plan, that figure would not have been any different than it has been in the past, and the additional expense we have included is what the other plan cost over and above what that would have cost us. In our check we included the cost of checking the records each year under the per diem plan. My exhibit only includes the additional cost (Tr. 866). The $97,913.82 represents only reclaim which would have been paid to the Manufacturers Junction if the reclaim period had been revised from the old figure to 3.22. This $97,913.82 only represents the cash that would pass as between the direct connections on the one hand and the Manufacturers Junction Railway on the other in reclaim (Tr. 867-8). It does not follow from the fact that a road is a direct connection that it would pay a reclaim. The $97,913.82 would have been paid by roads having a road haul subject to reclaim (Tr. 870). Of the direct con-

nections of the Manufacturing Junction the B. & O. C. T., the Belt Railway of Chicago and the C. & I. W. would not have paid a nickel of the $97,913.82. I used the term "direct connection" in the same way it is used in the Car Service Rules. A direct connection in the Chicago terminal is any connection that connects by intermediate carrier, car ferry or float. The $97,000 would be paid, for instance, by a road like the Pennsylvania which turns the car over to [fol. 201] the Belt which in turn turns it over to the Manufacturers Junction (Tr. 871). In using the term "direct connection", I omit intermediate railroads. As to whether this $97,913.82 has any relation to the amount of money that the car owners received for the cars while they were on the rails of the Manufacturers' Junction Railroad, it has this relation, that the car owner is entitled under the per diem rules to $1 per day on his car, whether it be paid under Rule 6 or by the Industrial Railroad if it happens to pay per diem. In other words, if the Industrial Railroad was paying any per diem it would be paying the car owner direct and obtaining from these direct connections this amount of money as a refund. I do not know that sum was different from the $97,913.82. On Sheet 2 of Exhibit 67, $155,580 is the amount car owners would have received from the Illinois Northern. The figure $135,234.71 above there, which is a difference of over $20,000, is the refund to the car user on the basis of the reclaim due for average detention on cars that he paid the car owner money on (Tr. 872). In Section A, on Sheet 2 of Exhibit 67, the expense of $104,078.55 shown is the expense incurred by roads having physical connection with the Manufacturers Junction (Tr. 873). The only difference in the matter of car hire with respect to the traffic of the Manufacturers' Junction under the Birmingham Southern Rules and under the old basis would be the expense incurred in compiling the records and the amount of per diem the Manufacturers' Junction would have paid the car owners on cars in interterminal service. The only difference so far as the Manufacturers' Junction Railway results are concerned is that according to your exhibit Section A, that railway would have stood the difference between $104,078.55 and $3,097.55 and making the deduction, $101,000 net under the Birmingham Southern Rules and $97,913.82 under the per diem rules, or a difference of $4,000 (Tr.

874). As used in the exhibits, the term "a direct connec-
[fol. 202] tion" is used to indicate under the Birmingham Southern basis a direct physical connection which is different from a direct connection under the per diem and reclaim rules. Section A, Sheet 2 of Exhibit 67 represents per diem expense and cost of keeping records, less car hire collected (Tr. 876) No gains from per diem were reported by a direct connection in 1924. My figures were taken from figures reported by the various railroads which connected with the industrial carriers. In 1924, under my table A, the direct connection would get an advantage where the actual detention by the industrial road was less than the average detention shown by the last check, but no actual check was taken of the cars on the industrial railroads for reclaim purposes (Tr. 877). I have not shown the relationship between the last check of detention on the industrial roads shown in Section A and the figures used in Exhibit 67 as representing the detention on the industrial railroads during 1924. I can only say that with the various railroads on the basis of reclaims indicated there was not any profit to the direct connections of the four industrial railroads shown in Section A (Tr. 878). None of them reported on this feature. The figures that we used were the arbitraries of the switching line delivering the car, on the theory that the direct connection was responsible to us for reclaim on the car. It is correct to say that in making our settlement we threw out the annual check of the American Railway Association and settled on some other basis, but that does not tell the whole story. The detention when the industrial railroad ceased to pay per diem was not the only detention for which the delivering time was responsible. An intermediate carrier was responsible from the time it got the car from the roadhaul carrier until it cleared the industrial railroad to another per diem railroad either loaded or empty, so that for reclaim purposes they allowed the arbi-
[fol. 203] trary of the direct connection (Tr. 879). The basis that I have used to show the 1924 settlements with the car owners for cars interchanged with the Pullman Railroad to cover that part of the detention which occurred on the Pullman was the arbitrary based on the last check which was made in 1922 or 1923 (Tr. 880). Section A, Sheet 2 of Exhibit 67, shows the per diem expense to the

direct connections. If the car owner was a roadhaul carrier, the direct connection would get some of that back from the car owner. We have only been able to get their out-of-pocket cost based on the Birmingham Southern Rule to the extent that we have been able to develop what we thought would be the average detention per car for reclaim purposes (Tr. 881). On an interterminal car, the Belt Railroad which connects with the Manufacturers Junction would be out-of-pocket under the Birmingham Southern basis the amount of per diem which the Junction would have to pay (Tr. 882). On a line haul car if the Belt was an intermediate carrier to the Manufacturers' Junction, it would bear all of the car hire expense while the car was on the Manufacturers' Junction up to the amount of free time allowed under the Birmingham Southern Rules, but would get a reclaim from its trunk line connections to the extent of one day. We could also claim the arbitrary under an agreement in this district which is in excess of one day the arbitrary which would be given to the industrial road. That is the reclaim we made (Tr. 883). We would pay the car owner the per diem and make that reclaim to our direct connections under the Birmingham Southern basis (Tr. 884). Under the Birmingham Southern plan, as modified, the Belt paid all of the per diem expense regardless of free time while the car was on the industrial railroad. If the car was over 15 days and we were entitled to four days free time we paid the 15 days. I imagine the Manufacturers' Junction collected the [fol. 204] demurrage (Tr. 885). I assume that demurrage from shipper or consignee was meant. The demurrage paid by the industrial carrier under the Birmingham Southern plan came to us. On a shipment coming in to Chicago, on which the Belt acted as the intermediate carrier and made delivery to the Manufacturers' Junction, which is under the Birmingham Southern basis and gets a certain amount of free time; while the car is on the Manufacturers' Junction, the Belt pays per diem to the car owner. We would get a reclaim of 3.87 if the owner were the delivering road haul carrier, plus an intermediate reclaim of $1 (Tr. 886). We would not be out the total amount of the per diem but the Belt would be out the difference between the amount of the detention and the reclaim collected on the cars (Tr. 887). On Exhibit 67, I undertake to show

the expense under the modified Birmingham Southern Rules incurred by the direct connection (Tr. 888). By "direct connection" I mean the roads which physically connect with the industrial road. We connect with the Manufacturers' Junction Railway. We are not out the total amounts shown but are out the amounts shown less the reclaims (Tr. 889). We have not collected any figures showing the amount of reclaim the direct connections of the industrial roads would get from their connections (Tr. 890). In Exhibit 67, Section A, Sheet 2, I have referred to the expense incurred under the modified Birmingham Southern Rules by the direct physical connections of the industrial roads. These direct connections in turn reclaim from their trunk line connections on a certain basis, so that they are not out the specific amounts shown. In Section B I show the expense which would have been incurred by the direct connections had per diem with reclaim been in effect (Tr. 891). In Sections A and B on Sheet 2 of Exhibit 67, I have used different carriers, due to the fact that under the Birmingham Southern application you are [fol. 205] required to use the direct connection, and under the per diem with reclaim plan, every road in Chicago has to be taken into consideration. We use different carriers in the exhibits because under the per diem with reclaim plan the reclaim is paid by the road haul carrier, and while it does not connect directly with the industrial road it bears the expense (Tr. 892). There is no reclaim on interterminal traffic but the Birmingham Southern basis did apply to it. To the extent that the physically direct connection has a reclaim, it merely passes the expense on to the connecting trunk line (Tr. 893). This means that while here I have included in the expense of the physically direct connection, still deducting it from the $479,000 does not mean that $479,000 would be decreased in any amount; it still remains the net loss under this method of settlement to those carriers who furnish the equipment (Tr. 894).

Cross-examination:

When I said that the Birmingham Southern Rules extended free time to a class of traffic not previously subject to reclaim, I referred by the word "previous" to the period immediately prior to these roads' going out of the per diem with reclaim plans (Tr. 896). All cars owned by industrial

railroads and interchanged with other roads are not settled for on the same basis. If industrial roads are members of the per diem agreement, they receive $1 a day for their cars; otherwise they receive a mileage rate. The mileage situation does not obtain here in Chicago with respect to these four industrial railroads. They get $1 a day for their cars when they are used by other railroads (Tr. 897). I know the Illinois Northern and Chicago Short Line have cars that they interchange; the Belt Railroad has paid per [fol. 206] diem on Chicago Short Line cars. I think that a switching railroad in Chicago should own enough cars to take care of what international business it originates (Tr. 898). At different times in the last few years there has been a surplus of cars of different classes in the Chicago district. Through its tenants, who grant free use of their cars, the Belt Railroad has enough cars to handle the interterminal business which it originates. In my Exhibits 67 and 68 I have not taken into consideration any car that is not a per diem car (Tr. 899). The Belt Railroad pays per diem on the cars of its proprietary lines at the rate of $1 a day. I do not understand that the Pullman Railroad pays $1 a day since it is not on a per diem basis but on a modified demurrage basis, under the Birmingham Southern Rules as modified (Tr. 900). I know it does not pay the Belt Railroad $1 a day for the cars it gets from the Belt. The price they pay has averaged from 5c to 8c a car per day, arrived at through a plan of settlement arrived at by the Commission (Tr. 901). The 2.5 day reclaim allowance in Chicago on sub-station and trap cars is arbitrary until a check has been made and the figure actually arrived at. I do not know whether or not the check has been made, but that was the figure prescribed in Chicago (Tr. 902). It was by agreement between all the roads in Chicago including the industrial railroads. The expense of keeping records, shown in Exhibit 67, was furnished by the direct connections and shows the increase over and above what was previously in effect (Tr. 903). They were required to furnish the additional expense of the Birmingham Southern plan over the per diem expense and that was the figure that was furnished (Tr. 904). On the Belt Railroad we used the different operations that

were required in addition to the per diem plan, figured the cost and added them together, showing approximately what the additional cost was. We figured the cost on the basis [fol. 207] of the individuals employed during the period of the report (Tr. 905). The figures were taken on the basis of a certain number of cars which were followed through, and is the closest practical approximation we could make under the circumstances (Tr. 906). The figures were not picked out of the air but were taken after an analysis of the cost (Tr. 907). That additional expense amounts to about 10c a car and the amount of the delay on a car would make no difference in the accounting (Tr. 908). The Belt Railroad receives a reclaim of 5.30 on cars handled on terminal switching. Last year it was 5.03. The A. R. A. checks the reclaim records of the industrial railroads (Tr. 909). Cars are now handled by the Illinois Northern under the modified Birmingham Southern Rules, in less time than they were handled by that road under per diem. If a road has a reclaim of $3.00, it is not paying car hire up to $3 because it is being reimbursed in that amount (Tr. 910). The only difference between the Birmingham Southern Rules and the perdiem and reclaim rules is that the Birmingham Southern Rules now afford free time on interterminal cars. I do not think that my summary of the figures was to show that the difference in expense was entirely due to free time (Tr. 911). I do not know why the additional cost of keeping records on the Illinois Northern is so much greater than on the other terminal roads, as the different figures were furnished by the individual lines. I am not familiar with the operations of the trunk lines in so far as they relate to the cost of obtaining of these figures. The questionnaire asked for a statement of the additional expense over the per diem plan (Tr. 912). On a car inbound to the Manufacturers Junction, which the Belt Railroad handles as intermediate carrier, the Belt would receive $1 intermediate reclaim and a reclaim of 3.87 on the inbound move. It would get the same reclaim on the outbound move if loaded, and if it went back empty we would get the $1 (Tr. 913). Referring to the column headed "Expense incurred by direct connections," I would not say that during that period our road had nothing to pay for the use of those cars and that it was ahead any revenue

[fol. 208] received on them. The cost of maintaining a car continues whether the car is in use or not (Tr. 914). If an inbound loaded car to one of these industrial roads is unloaded and returned empty, per diem goes on while the car is loaded and while it is empty. If it is going to be returned empty in intermediate service, per diem is paid on it (Tr. 915). The per diem shown in Exhibit 67 represents the detention of per diem cars on industrial railroads (Tr. 916). In case a car goes to the Illinois Northern from the Illinois Central, Column 2, Sheet 2, Exhibit 67, represents the detention expressed in days on that car from the time it arrived on the Illinois Northern until it was delivered by you to another per diem railroad. If the Illinois Central car came to the Illinois Northern from the Burlington, and the Illinois Northern were returning it empty to the Illinois Central and it put in a load for the Illinois Central, the Burlington would have paid the owner the per diem on it, and it would have been classified as a car delivered by the owner (Tr. 917). All this per diem is shown in Column 2 (Tr. 918). Detention under the Birmingham Southern basis is different from that under per diem. Per Diem includes Sundays and holidays and starts at midnight, while the Birmingham Southern detention starts at 7 A. M. and omits Sundays and holidays, except after a certain length of time. The detention figures as indicated on Exhibits 67 and 68 are straight per diem figures with Sundays and holidays included (Tr. 919). It represents per diem detention. We have nothing to indicate the Birmingham Southern detention (Tr. 920). I would not attribute the decreased detention of all cars under the Birmingham Southern basis to any particular factor. Checks show that there is generally a reduction in average detention on all roads from year to year, regardless of the method of settlement (Tr. 921). In determining reclaim there is no exclusion of the days on which we collect demurrage, so that on some cars we could reclaim and also get demurrage [fol. 209] (Tr. 922). I do not see, without giving it thought, just how we could transfer the accounting expense under the Birmingham Southern Rules to the industrial railroads. The only expense in addition incurred by the connecting lines in keeping records under the Birmingham Southern basis is not the expense of the operation of the Birming-

ham Southern rules, but the additional expense made necessary by those roads going out of per diem and of complying with the per diem rules and paying the car owner the per diem (Tr. 923).

H. O. CAMERON was called as a witness and, being duly sworn, testified as follows:

I am President of the Bay Terminal Railroad Company, located at Toledo, Ohio (Tr. 925). It is an incorporated railroad doing a terminal switching business at Toledo, and also operates a line of tank cars. Our connections are the New York Central, Wheeling and Lake Erie and Toledo Terminal. The road has been an associate member of the American Railway Association for about 8 years. All of our movement is inbound and outbound and our principal industry is the Sun Oil Company (Tr. 926). It is an oil refinery at Toledo and has no direct or indirect interest in the railroad. The railroad is owned by the estate of J. N. Pew and this estate also has a stock interest in the Sun Oil Company which also has several thousand other stockholders (Tr. 927). The road operates under the modified Birmingham Southern Rules for foreign cars on our line and we receive per diem for our cars on foreign lines under an order of the Commission. We attempted to become a subscriber to the per diem rules but it was held up because we could not operate under two bases, one per diem for our cars and the Birmingham Southern Rules for foreign cars. It is by reason of an order of the Commis- [fol. 210] sion which fixed the modified Birmingham Southern Rules for settlement for foreign cars on our line (Tr. 928). Our only additional expense because of having the two systems is the additional accounting. I would much prefer to be a party to the per diem rules and operate all of our business under them both with respect to our cars and cars of foreign lines. Under them we would have reclaim. Our road was a party to the Second Industrial Railways Case (Tr. 929) and in it was declared to be a common carrier. Our tank cars are owned by the Bay Terminal Railroad. The Sun Company owns and operates its own cars under its own name on a mileage basis. Usually we transport only the products of the Sun Oil Company

in our cars (Tr. 930) which are on a per diem basis. Under the Per Diem Code, our cars would be on the per diem basis. I think all tank cars owned by railroads are on that basis. We wish to abandon this Birmingham Southern basis, join the A. R. A. and subscribe to the Per Diem Rules of the Association because we think that is the best method of handling car hire (Tr. 931). If we are permitted to do that, we will handle our equipment in accordance with the car service rules. All of our traffic is terminal switch traffic and under the per diem rules we would get reclaim on foreign cars handled in terminal switching service. The railroad owns 360 cars operated on the per diem basis and the Sun Oil Company owns 1,000 cars which are operated on a mileage basis (Tr. 932). Our cars are marked "Bay Terminal Railroad" but are used principally for transporting Sun Oil Company products. They are occasionally used for some other service. Our demurrage collections do not amount to any considerable sum. We filed an answer to the questionnaire issued by the Commission (Tr. 933).

[fol. 211] Cross-examination:

We would prefer the Birmingham Southern basis rather than per diem without reclaim, but I understand we would have a reclaim. We favor the per diem basis because we would get reclaims, which we do not have under the Birmingham Southern Rule. I would prefer the Birmingham Southern rather than straight per diem without reclaim. We feel that we are a common carrier railroad and ought to be treated the same as any other railroad, and that a terminal line such as ours is entitled to a reasonable number of free days incident to the character of the services performed, on any method of car hire settlement (Tr. 934). Our charges are published as switching charges. We publish no local rates but are a party to the local switching tariff in Toledo (Tr. 935). At the present time we get a dollar a day for our cars while they are on other lines, but we do not pay a dollar a day for foreign cars used by us. Our free time allowance now is three days (Tr. 936). I think our detention is slightly less than that. Whether or not we would lose money under per diem and reclaim would, I suppose, depend on the amount of reclaim allowed to us (Tr. 937).

R. R. EVANS, having been previously called as a witness, was recalled and testified:

I have been with the Big Sandy & Kentucky River Railroad since it was built (Tr. 938). In 1912 when it was built, the Dawkins Lumber Company were the principal shippers. The Southern Hardwood Company that owned the Lumber Company before the railroad was built first built the track over 8 or 9 miles to get their lumber to the Chesapeake & Ohio (Tr. 939). A corporation was formed to build the railroad. Practically all of our traffic is coal and lumber and we get a division of 40¢ a ton on coal. On lumber we get our local rate (Tr. 940). Our gross revenue in 1926 was $227,184.23 and our per diem payments were about [fol. 212] $18,000 but I do not remember the exact amount (Tr. 941). Because our local rate is high and the Chesapeake & Ohio's local rate is high, it makes our per diem unduly high when compared with our revenue. We cannot afford to cut our rates as the road has never made any money. I think a fair basis of car hire would be the Birmingham Southern basis or a reclaim, because the road is a feeder (Tr. 942). I have never figured out what the relationship should be between car hire and revenue. Our computation on the questionnaire shows that with 2 days' free time our per diem payments would be cut 67 per cent. and with three days' free time it would practically cut it all out. We would like to have all of our per diem cut out. We want to take what we can get. We should have some favorable means of settling car hire (Tr. 943). One principal reason is because we need the money and think we ought to have it because it is no more than fair. I can see some difference, but not much, between my railroad and the Bay Terminal. The Bay Terminal performs a switching service and we also perform practically a switching service, although it is line haul; the difference is so small I cannot see it (Tr. 944). I should think any short line was entitled to that relief. It is up to the Commission to say how long a railroad should be to get relief. We get three or four engines from the Chesapeake & Ohio. It has occurred to me to try and get them for nothing, but I have never tried it (Tr. 945). I have not considered asking the Commission to require them to do this. The Commission first prescribed our divisions on coal but later on we settled on the 40¢ division, which is what the Chesapeake & Ohio allowed us, and receive our local rate on lumber (Tr.

946). It would help some if the proper relationship between per diem and revenue was produced by increasing our revenue. Our local rates are higher now than the traf-
[fol. 213] fic will stand, and the shippers are complaining now of our high rates and are trying in a case before the Commission to get them reduced (Tr. 947). We are trying to reduce car hire expense because it is one of the largest items and one we think the trunk line should help us bear, because of the service we perform. We feel that our divisions and rates are not sufficient compensation for the services we perform and want our income increased through a car hire allowance. The Chesapeake & Ohio allots all the cars to the mines on our line and we do not have anything to do with it. If they send in 10 cars we pay $10 a day; we are up against it right then, and we probably will pay more per diem than if we were ordering the cars ourselves (Tr. 948). They treat us as though we were a branch line and have collected per diem on private line cars on which they were only paying 1½¢ a mile. They are not doing that now. All of our service is a line haul service, more or less. We perform a little local service and furnish mostly our own cars for it (Tr. 949). I would not say that we never used foreign equipment for that service, but most of the time we try to cut down the per diem. I think we ought to pay per diem on foreign cars used in that service. I think that because the Chesapeake & Ohio has a surplus of cars we should not have any. If we could borrow money on the same basis the Chesapeake & Ohio does, it would be all right for us to own cars, but under the law we could not borrow money to buy cars (Tr. 950). If we bought cars we would have to borrow money and the interest would be passed on to the public. The Chesapeake & Ohio will pass on to the public the cost of the cars which we use if we do not pay for them. I do not think the Chesapeake & Ohio would allow us to use their engines for nothing; I do not think we could get any relief that way; we might better go to the Red Cross (Tr. 951). The Big Sandy has always been dependent upon the Chesapeake & Ohio for
[fol. 214] coal cars and we have no control over the matter. We think that whatever time is used in placing cars for loading and unloading should be taken into account in any per diem settlement finally determined by the Commission, because the Big Sandy is treated as a branch or feeder line by the Chesapeake & Ohio (Tr. 952).

Director Bartel: The Big Sandy's questionnaire was not responsive to an order by the Commission and is not in evidence (Tr. 956). I said the Bay Terminal answer was in evidence because it was filed in answer to a Commission order.

The Witness: On my Exhibit 60 we only showed per diem accruals on foreign lines with respect to cars we traced through to destination. We figured $1 for each 24 hours and figured the time from the date the shipment was forwarded from point of origin (Tr. 957). It is very usual for more per diem than that to accrue and for more revenue to accrue. Our per diem is figured on actual time to the station and the trunk line figures are estimated to a certain extent. The estimated per diem accrued on foreign lines is the minimum amount of per diem that could accrue; if there had been any more they would have collected demurrage (Tr. 958). We do not take into consideration per diem paid on cars hauled empty inbound by the trunk lines; these shown are all loads, no empties. We have no bill coal at the mines on our line. We let the cars stay there and pay per diem. In one instance we paid $122 (Tr. 959). We never assessed any demurrage and finally dumped the coal. Our no bill coal is held on the main siding. We collect demurrage under the National Demurrage Rules. All of it accrues on foreign line cars and is retained by us, but we collect no demurrage on coal. In 1926 we collected $1200 demurrage, and we would have had that profit on a few cars on the Chesapeake & Ohio, but not to all destinations, if we had not paid per diem (Tr. 960). I [fol. 215] do not consider demurrage is a profit; it costs something to hold these cars on the lines with limited switches like we have. They are always in the way. The Chesapeake & Ohio is not now collecting per diem on private cars. I do not know how our detention on coal cars compares with detention on other cars, but it hits us pretty hard sometimes. On Exhibit 60 the earnings shown are tariff revenue and do not include demurrage. Our gross freight revenue does not include our demurrage collections (Tr. 962). We show demurrage separately on our report to the Commission. We have no joint rates on lumber; only on coal (Tr. 963).

E. F. GAYLORD was called as a witness and, being duly sworn, testified as follows:

I am Car Accountant of the Chicago, Burlington & Quincy Railroad, and have been for 13 years (Tr. 967). I am a member of the Committee referred to by Mr. Wasson which made a study of the Birmingham Southern Rules in Chicago (Tr. 967) and participated in the making of the study. I concur in the conclusions testified to by Mr. Wasson with respect to the study. The Committee formulated a set of instructions setting forth what was wanted and which was sent to the Trunk and Belt lines in Chicago which were members of the General Managers' Association (Tr. 968). The figures presented were furnished in response thereto. On Sheet 2 of Exhibit 67, Section A, is shown per diem paid to owners by the direct physical connections of the industrial carriers. Column 2 is the per diem lost on system cars owned and delivered by direct connections while detained on the industrial carriers (Tr. 969). That per diem was lost because if the industrial roads had paid per diem they would have paid $1 a day to the owner of the car. The amount of additional expense incurred in keeping records, as compared with the per diem plan, is the total of the figures submitted to the Committee [fol. 216] as additional expense. That gives the total expense from which is deducted the car hire paid by the industrial roads under the Birmingham Southern Rules. It is true that under some circumstances some other road than the one which paid the per diem shared in the expense, but that is a local arrangement among the members of the General Managers' Association, to relieve the belt road, or the road that paid the per diem, of a part of the expense being borne by the road haul carriers, the trunk lines, which received the revenues for the road haul movement (Tr. 970). The Belt Railway, for example, would pay in the first place and then the Burlington assume part of the expense. The operation only divided the loss and passed it to another road. The Burlington would do this because the Belt Railway would receive only a switching charge for its service. In delivering it to the short line obviously it was not fair that the belt should stand all of that per diem expense, when it was handling cars only

on a switching charge and the trunk line received a freight rate for a road haul. The belt lines in Chicago do not participate in joint rates (Tr. 971). With very few exceptions they have their own tariffs which name a rate per car or per ton which is absorbed. On a car from the Burlington to the Belt and from the Belt to the Manufacturers Junction, for delivery at an industry, both the Belt Railway and the Junction publish a switching charge which is absorbed by the Burlington (Tr. 972). The switching charges are paid by the line haul carrier as an ultimate fact (Tr. 973). There is a local rule in the Chicago district that all rates named in the Lowrey tariff for handling cars within the Chicago switching district shall be deemed switching charges in order to give the switching roads the reclaim against the road haul carrier (Tr. 974). On a car from the Burlington to the Belt Railway and then to the Manufacturers Junction, the Burlington would have paid through the reclaim all of the per diem had the per diem rules been in effect. Reclaim on terminal switching is al- [fol. 217] lowed only to a terminal road, but when a car is handled to a terminal road through an intermediate switching road, we allow reclaim (Tr. 975) of $1 per car and also allow terminal switching reclaim to the terminal road (Tr. 976). Under the reclaim plan we would allow a reclaim to the switching road and an additional $1 to the intermediate road. Under the Birmingham Southern Rules we allow to the intermediate carrier the same reclaim that we would allow under per diem to the industrial carrier, plus the $1 intermediate charge, which transfers the burden of that much money from the Belt Railway to the line haul carrier (Tr. 977). The Belt lines could not afford to stand the charge of $3 or $4 a car on cars delivered by them to the industrial carriers, since the Belt Railway receives only an intermediate switching charge. The amounts shown in Sub-columns A and B, Column 1, Section A, Sheet No. 2, Exhibit No. 67 are actual amounts expended by the carrier which delivered the cars to the industrial carrier, whether the delivering carrier was a road haul carrier or an intermediate switching road (Tr. 978). It is possible to split the totals shown as being paid the industrial roads among the various roads which paid, but we have not those figures. To get the total we did have the figures for the individual roads (Tr. 981). We claim that the total of the

amounts shown in Column 1-A and B and Column 2-A and B, of Exhibit 67, $103,571, is the amount which would have been paid by the Manufacturers Junction under the Per Diem Rules (Tr. 987). That represents the exact time these cars were on the Manufacturers Junction. It will be very difficult to allocate to direct connections the amount of additional expense incurred by each in keeping records under the Birmingham Southern Rules as compared with per diem. On the Burlington, we got the additional expense by ascertaining from our local agent how much more it was [fol. 218] costing him to maintain records under the Birmingham Southern Rules than to maintain his other demurrage records before this order went into effect. I also took the actual cost at that clerk's rate given by my clerk in maintaining the records in my office on these four industrial roads (Tr. 988). It is costing the Burlington $132 a month to administer the Birmingham Southern Rules on the Illinois Northern and Manufacturers Junction over what it would cost under per diem with reclaim that does not include the allocation of per diem (Tr. 989). In getting detention on these four industrial carriers of Chicago we took the total detention to all cars delivered by direct connection, deducted detention on trap cars, and arrived at the average of 3.22 which has been mentioned for the Manufacturers Junction. That average is undoubtedly higher than a check made by the American Railway Association to determine what the switching reclaim of that road would be for this reason (Tr. 991); such a check would have eliminated cars used in local service and interterminal service by the Junction and other delays which were not eliminated by us because we did not have access to the records (Tr. 992). I think that generally checks have shown a lesser detention to cars in switching service than in former years, even though a road was operated under per diem in both instances (Tr. 993). On Sheet 2 of Exhibit 67, the cars shown in intermediate switching service are those on which the four industrial roads act as intermediate carriers (Tr. 996). In making a reclaim check under the reclaim rules, cars in terminal switching which have been diverted to local service are disregarded (Tr. 997). In the check there might be a possibility for profit in reclaim from the diversion of cars which have been released promptly to local

service, but such a car will certainly be delayed longer than a car that is returned promptly when unloaded, so that in the aggregate the delay would be greater. Checks are, [fol. 219] therefore, confined to cars which were confined to legitimate terminal switching service (Tr. 998).

Cross-examination:

I cannot intelligently comment on the fact that in view of the fact that 10,966 professional, clerical and general employes are entirely chargeable to Chicago terminal district operations, the $121 a month on the Burlington, or a total of $18,742.46 on all roads in the Chicago district on one arrangement as against the other, is not simply negligible. The payment by the Burlington of $132 a month was for a clerk that we would not have needed if it had not been for the Burlington Southern Rules (Tr. 999). The loss of over $18,000 sustained by the Chicago roads under the Birmingham Southern Rules is not a negligible factor (Tr. 1000). We say this because the Birmingham Southern Rules, as applicable to these four industrial roads, have not made additional car efficiency but have saddled an additional expense on direct connections and have relieved these industrial roads of a large expense (Tr. 1001). The obligation of making all statements and reports is put upon the connecting carrier.

(Official map of Chicago switching district received in evidence as Exhibit No. 69) (Tr. 1002).

In the statement presented on behalf of the General Managers' Association it is said that the Birmingham Southern Rules are burdensome and expensive. In connection with that statement, under the Birmingham Southern Rules, the industrial road does not figure its per diem, but this burden is imposed upon the delivering road. The connecting lines also have to pay the per diem on cars furnished by them on records furnished by them (Tr. 1003). We sign an interchange report when a car is delivered to the industrial road, and we know that date is correct, but these cars are delivered to other connections and we must then go to the trouble and expense of tracing them to ascertain the date [fol. 220] they were so delivered and correcting our records in order to set up car hire under the Birmingham Southern

Rules (Tr. 1004). We settle per diem on the records of the industrial roads, but we are frequently called upon to make additional payments because of defects in the records. When cars delivered by the Burlington to the industrial roads are diverted to other lines, it might be a violation of the Car Service Rules (Tr. 1005). When the industrial roads were given the Birmingham Southern Rules they were withdrawn both from the Car Service and the per diem agreements. Such a handling of a car would be a violation of the Car Service Rules. Making additional investigation because of accounting errors on the industrial roads is expensive (1006). It seems unfair that the road paying the per diem has to make its settlement on the basis of another road's records which it cannot check without considerable expense. We receive claims right along from car owners for additional per diem because of errors in the reports of the industrial roads. If those roads were in per diem and made the error they would have to stand the loss, but under the Birmingham Southern Rules this is put upon the delivering carrier (Tr. 1007). In June, 1927, 750 cars delivered by the Burlington to the Illinois Northern were delivered by it to other connections. We have tracers out now for cars that were delivered to the Illinois Northern and from which we have not yet heard. We won't know for four months how many cars were reported in error (Tr. 1008). Sometimes our own report is wrong, but in that case we stand for our own error. Under the Birmingham Southern Rules we stand for the errors of another road because we are obliged to find out when the cars are released by the Illinois Northern for example. As a member of the Per Diem Agreement we are responsible for the per diem for the cars delivered to nonmember roads. If they do not give the car back to us, we have to go to their records or accept their report. In case of an [fol. 221] error we cannot bill them for the extra per diem, since their only obligation is to pay to the delivering road once in six months the amount accruing under the Birmingham Southern Rules (Tr. 1010). If there were errors on cars above the 750 delivered by the Burlington to the Illinois Northern, the Burlington would accept the responsibility because its agent had signed the Illinois Northern report showing delivery back to it. We won't know for some months (Tr. 1011) whether or not the correct amount of

per diem has been paid (Tr. 1012). The feature I am bringing out is peculiar to the Birmingham Southern Rules because they place the burden upon the wrong road (Tr. 1013). I can only make the point clear by using the Illinois Northern as an example. The general proposition applies to all roads having direct connection with the four industrial roads. The additional expense I have referred to, because of errors in accounts furnished by the industrial roads, is not included in the exhibits (Tr. 1014). Rule 1 of the Per Diem Code requires an additional payment of 15¢ per car per day when per diem is not reported to a car owner within four months of the last day of the month in which it is earned. If we do not get such an error straightened up within four months, we pay 15¢ more (Tr. 1015) and after six months more it increases to 30¢ and it might eventually cost us 60¢ a car. Under per diem this burden would fall on the industrial roads; now it falls on the delivering road. The Burlington might get this penalty on its own car from other roads if they made a mistake, but most cars delivered to the industrial roads are foreign cars not of direct connections, and the direct connections do not benefit (Tr. 1016). We don't claim this is a terrible loss, but that it should be taken into consideration (Tr. 1017). These errors are just the ordinary errors to be expected in handling cars (Tr. 1018). We show and support our state-
[fol. 222] ment that the application of the Birmingham Southern Rules to the four industrial carriers has been unfair and burdensome as compared to the per diem with reclaim (Tr. 1019). In Column 1, Sheet 2, of Exhibit 67, we took per diem actually paid to the car owners by the direct connection. In connection with this part of the exhibit I made no statement with respect to detention (Tr. 1020). The figures in this part of the exhibit do not purport to be detention figures (Tr. 1021). In Column 2, Section A, Sheet 2, Exhibit 67, we do not show the reclaims that would have been allowed because the per diem system was not in effect. What is shown is the actual loss to the owners of the car that they would have received if the per diem with reclaim rules had been in effect (Tr. 1022). We show in Section B what would have been returned in reclaim as nearly as we could get at it, and the difference between the two is the cost of the Birmingham Southern Rules to the Chicago roads. Columns A and B do not in-

clude the same factors (Tr. 1023). Section B assumes that these roads would have received the reclaim shown on all cars handled because we had no way of determining what cars had been handled in terminal switching service. We give them credit for reclaim on all cars handled. Under the Per Diem Rules a check would have eliminated those cars handled in interterminal service (Tr. 1024). The note at the bottom of the page does not eliminate cars handled in local and interterminal service, although they would have been cut out under a check made to determine what the arbitrary reclaim would have been to these roads but since we had no access to the records of these industrial roads, we left all the detention to those cars in, in interterminal service, switching service, or any other local service (Tr. 1026). Section B shows what would have happened in re- [fol. 223] spect to reclaim had the industrial roads been in per diem. In getting reclaim we only took reclaim on reclaim cars (Tr. 1028). We have not shown in Exhibit 67 the costs which we escaped by not having to make a check on the four industrial railroads. I do not know what that cost would be (Tr. 1029). Under Rule 5 it may be that the annual check might be waived, but it may be possible that instructions have been issued that industrial roads must be checked every year. I know that instructions have been issued that all industrial roads in the per diem agreement be checked this year that had not had such a check made for over a year (Tr. 1030). Under per diem and reclaim the switching road would escape per diem on cars in terminal switching service up to an average number of days as determined by the check, but time beyond eight days on a car received under load and returned empty, and beyond sixteen days on a car received loaded which was unloaded and then reloaded and delivered to a line haul carrier, could be excluded; also per diem on cars used in interterminal service (Tr. 1031). Our figure of 5¢ or 8¢ a day includes interterminal and all cars interchanged with the industrial roads. I do not know what the result would be under per diem and reclaim (Tr. 1032). The Burlington pays intermediate reclaim to the exclusive belt roads handling cars in intermediate service, but would not to a trunk line acting as an intermediate road. We do not pay an intermediate reclaim on interterminal service (Tr. 1033). The Burlington might adjust the additional burden imposed

on the Belt under the Birmingham Southern Rules through an adjustment of absorption, instead of by assuming the per diem formerly paid by the industrial road, but car hire should not be provided for by absorptions.

Mr. Barse: Mr. Director, I think it is improper here to discuss questions of rates (Tr. 1034).

The Witness: I thought he meant absorption of the actual [fol. 224] expense not the absorption of charges (Tr. 1035).

The amount received by the delivering carrier from the industrial road under the Birmingham Southern rules would not be affected by the errors in the reports to which I have referred and which cost us 15 cents extra. The Illinois Northern is shown in Exhibit 67, Sheet 1, to have paid $1538 demurage in 1924 and under the per diem rules and would have received reclaim on terminal cars, intermediate cars, sub-station and trap cars (Tr. 1037). It would not have received reclaim on interterminal cars. These cars are not the only per diem expense it would have borne; the Illinois Northern would have paid per diem on detention beyond eight days or sixteen days per car. The average detention on Exhibit 67 includes interterminal cars and intraterminal cars. If they were out the average detention would have been less than shown. (Tr. 1038). The additional accounting expense charged against the Illinois Northern on Exhibit 67 is $9,057.13 or 14.1¢ per car (tr. 1039). I know the Burlington additional cost is correct, and I think the other roads' statements are also. We made no allowance in the figure under reclaim because we did not make a reclaim against these roads (Tr. 1040). In Chicago there is traffic in which a switching road enjoys line haul revenue but receives reclaim. This is under a rule adopted in 1920 (Tr. 1041), which provides that cars handled in terminal service in the Chicago district under the Lowrey tariff are handled on a switching rate basis. If the rate which a delivering carrier receives is found in the Lowrey tariff, we consider it a switching rate basis and allow reclaim (Tr. 1042). If cars are handled in the terminal district on which a delivering carrier receives a division of the rate up to the point of delivery, the reclaim is not allowed.

[fol. 225] Mr. Towner: Is it not a fact that the Lowrey tariff is a switching tariff in the Chicago district?

Mr. Bartel: I so understand it (Tr. 1043.)

W. H. Giles was called as a witness and, being duly sworn, testified as follows:

I am special agent for the Pennsylvania Railroad in Chicago (Tr. 1050). I have been in demurrage and per diem matters for the last 20 years and was a member of the special committee referred to by Mr. Wasson and Mr. Gaylord. I participated in the study and am familiar with the facts developed by it. I concur in the conclusions of Mr. Wasson and Mr. Gaylord (Tr. 1051).

James T. Morrison was called as a witness and, being duly sworn, testified as follows:

I am Vice President of the Pullman Railroad. It is located entirely within the Chicago switching district and extends south from Pullman Junction to the Calumet River and the mouth of Lake Calumet (Tr. 1052). I have a map showing the railroad, industries on it, etc.

(Document received in evidence as Exhibit No. 70.)

The map shows a list of carriers delivering cars to us at our interchange yards (Tr. 1053, 1054). In making deliveries of cars, our locomotives go on foreign rails and foreign locomotives come on our rails. Our former mileage of 75 miles has now increased somewhat. All industries on our railroads have signed the average demurrage agreement (Tr. 1055). The average haul has increased from 2.97 miles to approximately 5 miles between controlling and affiliating industries and interchange yards since the hearing and decision of the Commission in re Pullman Company, 61 I. C. C. 637, between independent industries and our team tracks and interchange yards with connecting carriers our average haul has been increased from 2.87 to approximately 5 miles. This is the only material change (Tr. 1056). There has been no change since the former [fol. 226] hearing in conditions as to interchange, other

than we have had for the past three or four years an interchange yard at Kensington Transfer with the Chicago, South Shore & South Bend Railway and the changed conditions due to operation.

Q. Will you please state any changes in the rate structure of the Pullman Railroad.

Mr. Barse: I do not quite see how that is pertinent here.

Mr. Hartman: I understand the former case has been combined with the general investigation.

Director Bartel: Only in so far as car hire is concerned.

Mr. Hartman: I do not care about getting the rates changed but I think that whether the rate is fixed by a division, or in a local tariff, or what not, has a material effect on the question of whether the per diem with reclaim is proper or the Birmingham Southern plan is proper.

Director Bartel: If that is the purpose of it, you may go ahead. (Tr. 1057.)

The Witness: Since the last hearing our allowance from the trunk lines was increased from $3.75 to $5.25 per car under Ex. Parte Order 74 and then reduced to $4.95 per car, under the reduced rate order of the Commission in 1922. These allowances prior to July 1925 were on a per car basis regardless of weight. It is now $4.95 per car plus 16¢ per ton or fraction for weight in excess of 60,000 pounds. Our rates are allowances for service performed for the trunk lines, and on local business are governed by Pullman Railroad tariffs (Tr. 1058). I have prepared a statement showing the book value of the properties of the Pullman as of December 31, 1926 and the figures shown in the Commission's decision in the previous case (Tr. 1059).

(Document received in evidence as Exhibit No. 71).

I have prepared a statement showing the income of the [fol. 227] Pullman for the years 1916 to 1926, inclusive.

(Document received in evidence as Exhibit No. 72).

I have prepared a statement showing operating ratio of the Pullman Railroad for the years 1910 to 1926, inclusive.

(Document received in evidence as Exhibit No. 73.)

I have prepared a statement showing the net operating railway income for the years 1910 to 1926, inclusive (Tr. 1060).

(Document received in evidence as Exhibit No. 74.)

I have prepared a statement showing the number of loaded per diem cars inbound and outbound on the Pullman during the years 1924, 1925 and 1926.

(Document received in evidence as Exhibit No. 75.)

The modified Birmingham Southern rule under which the Pullman Road is operated does not contain any provision under which money is received by it from its connections or from the car owners with respect, directly or indirectly, to per diem or car detention (Tr. 1061). Our service to the Pullman Company, the owning industry, the Pullman Company, is no different than our service to independent industries (Tr. 1062). Since the Commission's decision in 78 I.C.C. 475, our total mileage has increased from 21.555 to 23.28 miles. We now have seven locomotives instead of six (1063) and seventy cars instead of 158: Average haul has been increased from 3.35 and 3.24 to approximately 4.85 and 4.74 miles. We now have thirteen industries instead of fifteen. We use no foreign cars in local service as we have enough cars of our own (Tr. 1064). I have prepared an exhibit bringing down to December 31, 1926 the figures shown on page 486 of the decision in 78 I.C.C. 475 with respect to demurrage on cars handled for the Pullman Company supplementing them by a statement showing the percentage of total business handled for that Company during the same period.

(Document received in evidence as Exhibit No. 76.)

I have prepared a statement showing detention of cars due to repairs (Tr. 1065).

(Document received in evidence as Exhibit No. 77.)

I have prepared a statement showing the cost of policing demurrage cars in 1924, 1925 and 1926.

(Document received in evidence as Exhibit No. 78.)

[fol. 228] I have prepared a statement showing the amount of demurrage collected on foreign equipment and not transferred to the trunk lines in the years 1923 to 1926, inclusive.

(Document received in evidence as Exhibit No. 79.) (Tr. 1066.)

I have prepared a statement for 1924, 1925 and 1926, showing the cars which came to us under load and were reloaded on our rails.

(Document received in evidence as Exhibit No. 80.) (Tr. 1067.)

Since July 1, 1923, when the Pullman Railroad was placed on the modified Birmingham Southern basis, the Belt Railway of Chicago, under the per diem rules became the delivering or originating line (Tr. 1068), chargeable with per diem on cars delivered to us while the cars were on our rails, and on line haul cars under the switching reclaim rules in the Chicago District. They were then allowed the same reclaim, namely, 3.96 days per car, plus one day reclaim on intermediate line switching service. Thus, on a loaded car moving over the North Western consigned to an industry on our rails, the Belt Railway pays the per diem, while the car is on its line and while on our line, and the North Western allows the Belt $5.96 reclaim. If the total detention amounted to only 4.96 days, the Belt Line would receive from the Northwestern one day's per diem more than they paid to the car owner (1069). I have prepared an exhibit showing dates, car numbers, etc. on certain cars interchanged between the Belt Railway and the Pullman.

(Document received in evidence as Exhibit No. 81.)

The Pullman Company tariff requires it to furnish cars for loading and delivery on its own line and it uses no foreign equipment for this business (Tr. 1073). The tariff is a freight tariff published by the Pullman Railroad and covers the movement of business between industries on the railroad (Tr. 1074). The Pullman performs only switching movements and does not receive divisions of line haul rates. There are published by the Chicago Switching Committee [fol. 229] division sheets in connection with tariffs, which division sheets provide an allowance to the short haul terminal carriers for their service where the Chicago basis of rates is applied to industries located on the short haul terminal carrier's rails (Tr. 1075). Practically all of the Chicago Trunk Lines except the application of the Chicago rate on carloads of cinders, gravel, sand, crushed stone, ice, manure, brick, clay, drain tile, sawdust, shavings, livestock,

cord wood for fuel, building stone, on which commodities through rates to our own industries would be made on combination of local rates, so that on this business the trunk lines do not make us any allowance. On certain traffic through rates to our industries are made by adding 20¢ a ton to the line haul's local Chicago rate, and there is no agreement as to what allowance will be made to the short haul terminal lines out of this through rate.

Mr. Barse: For the purpose of the record, I move to strike out the testimony with respect to rates as not being pertinent to the issues.

Director Bartel: Your exception will be noted on the record (Tr. 1076.)

Q. On loaded cars where the trunk lines apply the flat Chicago rate to and from your industries what allowance do you make for your service?

Mr. Barse: That is objected to on the same ground. I do not think that is proper or pertinent to the issue here.

Mr. Hartman: I think the form in which the rate is published has considerable to do with whether or not the movement is a switching movement or an independent movement. A movement independent of the line haul (Tr. 1077).

The Witness: Our present allowance is $4.95 per car on 60,000 pounds, plus 16¢ per ton or fraction thereof for weight in excess of 60,000 pounds.

[fol. 230] Mr. Barse: May the record show that all this testimony with respect to rates and absorptions goes in over objection of petitioner?

Director Bartel: The record may so show (Tr. 1078).

The Witness: Where through rates exist the above allowance is for our service on line haul business. Where the Chicago rate is applied to and from our industries, the allowance made to us by the trunk line could be termed an absorption, inasmuch as it comes out of the flat Chicago rate. On loaded cars moving wholly within the switching district, on cars in a switch movement over our line and one of our direct connections, which might be termed a two line haul, as the switching rate in the Chicago district is the same as applied by our direct connection for a local switch movement on their rails, the allowance made to us

is absorbed. The same condition exists where the switch movement is over a three line haul, that is, where it is necessary to use an intermediate line between our line and the final delivery or originating line. The Pullman Railroad collects no line haul freight charges (Tr. 1079). Where loaded cars move to destinations wholly within the switching district, we collect the total charges and remit their proportions to the other lines.

Q. Please state briefly the history with respect to divisions and absorptions.

Mr. Towner: Mr. Director, had you decided we would go into that question?

Director Bartel: Not for the purpose of determining the question of rates or divisions. If the Commission should prescribe any different basis than the Birmingham Southern basis, the question of whether these are switching movements or line haul movements becomes important. * * * I will let him go into it just for the purpose of deter- [fol. 231] mining the movement (Tr. 1080).

Mr. Towner: All right.

The Witness: For many years prior to 1911, the switching charges within the district were absorbed by the trunk lines. The issuance of the Lowrey tariffs at that time simplified a chaotic situation. Our situation has never warranted our assessing a track storage charge on public team tracks; our public or team track business is relatively small (Tr. 1081). The decrease between 1923 and 1925 in the number of cars we own is due to cars being taken out of service, our present cars being adequate to handle local business. There have been no changes in the Pullman Company, the proprietary industry, since 1923 which affects the local business on the Pullman Railroad to any great degree as very little of the business to and from the Pullman Company originated or was shipped between points on the railroad.

(Exhibit No. 82 received in evidence.) (Tr. 1082.)

Both the trunk lines and the Pullman have had to elevate their tracks at Pullman Junction. Because of this we had to build a new receiving yard and track scale (Tr. 1083). The Belt Railway of Chicago can not reach on its own rails

any industry served by the Pullman. I have prepared a statement showing the average car detention of the Pullman for four months during 1923 and 1925.

(Document received in evidence as Exhibit No. 83.) (Tr. 1086.)

The increase in detention in 1925 of 3.262 days as against 3.025 days in 1923 might be due to the lesser number of cars (1776) in 1925 or the character of the business handled (Tr. 1087). This slight increase for 1925 as compared to 1923 would not indicate that our operation for 1925 in any way differed from 1923. In explanation of why our average detention on cars handled by us originating in and destined to industries wholly within the Chicago switching district is less than on cars handled by us in line haul traffic, I may say about 25% of the loaded cars handled by us moved wholly [fol. 232] within the Chicago switching district. We handle from 1500 to 1700 cars of ice between the Swift & Company's ice storage on our rails and their plant at the Stock Yards (Tr. 1088) in daily drags of from six to twelve cars. The detention on cars in this ice movement will not average to exceed 48 hours. This is substantially true of another industry, the Griffin Wheel Company, which unloads cars quickly, and of the Sherwin-Williams Company (Tr. 1089). The average detention on Chicago cars to and from our industries is lower than on out-of-town shipments (Tr. 1090). I have prepared a statement showing the average detention in 1923 and 1925, separated as between railroad and industry detention, terminal revenue haul and interterminal or switching district cars (Tr. 1091). In this exhibit terminal detention is detention on line haul cars.

(Said document received in evidence as Exhibit No. 84.) (Tr. 1092.)

This exhibit shows that in 1925 the detention by the affiliated industry was 1.980 days, which was .134 of a day less than in 1923 when it was 2.114 days and that the total industry independent and affiliated detention was less in 1923 by .102 than in 1925, due to the longer detention of the independent industries. The operation between affiliated and non-affiliated industries appears on Exhibit No. 83 (Tr. 1093). I have prepared a statement showing the number

of engine hours worked in the years 1922 to 1926, inclusive (Tr. 1094).

Mr. Barse: I object to the exhibit (Tr. 1095).

Director Bartel: It will be received subject to the objection.

(Document received in evidence as Exhibit No. 85.)

The Witness: I have also prepared a statement showing overtime paid to train crews during the years 1922 to 1926, inclusive.

Mr. Barse: It is objected to as immaterial.

Director Bartel: It will be received subject to the objection.

(Said document received in evidence as Exhibit No. 86.) (Tr. 1096.)

[fol. 233] The Witness: I have prepared a statement showing car detention by the Pullman Railroad during the years 1924 to 1926, inclusive.

(Document received in evidence as Exhibit No. 87.)

The increase in average detention on this exhibit in 1926 is due to the hampering of our operation due to the fact we had to use a detour in our track elevation (Tr. 1097). I am familiar with the reclaim allowances allowed to the Indiana Harbor Belt, Baltimore & Ohio, Chicago Terminal and Belt Railway of Chicago from 1917 up to the present time. I secured the information from the General Managers' Association and General Superintendents' Association (Tr. 1098). For several years prior to 1918, the coming of the United States Railroad Administration, the Indiana Harbor Belt, Baltimore & Ohio Chicago Terminal and Belt Railroad were dissatisfied with the arbitrary switching reclaim of five days allowed them and when the railroads were returned to their corporate owners in March, 1920, the Indiana Harbor Belt and Belt Railway refused to sign the Per Diem Agreement (Tr. 1100). The railroads returned to the Per Diem Agreement with an allowance to the Belt, B. & O. C. T. and I. H. B. of six days' switching reclaim which is still in effect on the I. H. B. and B. & O. C. T. The allowance to the Belt Railway is now 5.3 days. The six day arrangement went into effect on March 1, 1921. In 1923, the average

detention on the B. & O. C. T. was 6.52, the I. H. B. 6.42 and the Belt Railway 5.3 days resulting in the reduction of the reclaim allowance to the Belt, the other two stayed at 6 days (Tr. 1102). The Pullman Company and the Sherwin-Williams Company, industries served by us, own and use their own freight cars, 105 in number, of which Pullman owns 100. The Pullman Junction is a congested point protected by interlocking (Tr. 1103). Approximately 300 trains move through it every 24 hours. During some hours 25 or 30 trains will move through it, while during others the number drops to 10 or 12 movements (Tr. 1104). Our crews are frequently delayed getting through Pullman Junction, [fol. 234] as we are only permitted to move after the other interested carriers have been served. The Pullman Railroad is not eligible to a membership in the American Railway Association carrying voting power (Tr. 1105). Prior to January 1, 1916, the Association reclaim rules allowed reclaim on international switching movement, in the same amount as on terminal switching on a line haul car. In order that the terminal switching line's switching reclaim might not be a burden on the originating line, the latter's divisions were increased by a sufficient amount to pay the reclaim (Tr. 1106). Thus, prior to the increased rates made by the Railroad Administration during 1918, the two line rate divided 66-2/3% to the originating line and 33-1/3% to the terminal line, and the three line rate divided 50% to the originating line and 25% each to the intermediate line and terminal line. During the first two years of the existence of the Lowrey tariff in 1911 and 1912 the per diem rates March to July were 30¢ and from August to the following February 35¢. The switching reclaim was five days which amounted to $1.50 and $1.75 a car during the respective periods. On a $9.00 car two line move the originating line would receive $6.00 and the terminal line $3.00; deducting the terminal line's switching reclaim of $1.50 would leave $4.50 net for the originating line as against $3.00 for the terminal line. On a three line haul under a $12.00 rate the originating line received 50 per cent or $6.00 to $3.00 for the intermediate and terminal lines. Effective January 1, 1913, the per diem rate was increased to 45 cents per day; this with a five day switching reclaim, or

$2.25, had the effect of reducing the net amount of the originating line, after paying the terminal switching line's switching reclaim, from $4.50 to $3.75 per car on either a two or three line haul, bringing the originating line's proportion down to but 75¢ per car more than the terminal line's proportion. After paying the terminal switching line's reclaim of $1.50 the originating line had $4.56. The Pull-[fol. 235] man Railroad only received $3 a car regardless of size or weight which was not on a percentage basis or the same basis as between the trunk lines in this tariff (Tr. 1108). In order that this amount should not be decreased, an item was included in the division sheet under which it was given an additional allowance on outbound cars equal to the reclaim which it had to pay as the originating line to the terminal switching line (Tr. 1109). In November, 1915, a committee of the American Railway Association recommended the elimination of reclaim on intra-terminal switching (Tr. 1110) defined as "car loaded within the switching limits for unloading within the same switching limits." It is quite apparent that prior to November, 1915, the subject of switching reclaims on intra-terminal cars had received attention, and that of the additional allowance to take care of switching reclaims made to such lines as ours as published in Lowrey's division sheet with a view to eliminating the additional allowance and the intra-terminal switching reclaim. I was a party to some of the meetings of the Chicago Switching Committee (Tr. 1112) and have copies of their proceedings and of the General Superintendents' Association. In August, 1915, the tariff allowance to the Chicago Switching Lines, including the Pullman Railway, was recommended for cancellation also and that per diem allowance to the four roads be taken care of by the operating department of the carriers in interest (Tr. 1113). In the absence of objection, the division sheet was amended in November, 1915, and the matter taken up with the General Superintendents' Association to provide for reclaim to the switching roads (Tr. 1116). In December, 1915, the allowance of reclaim on intra-terminal switching was eliminated from the switching reclaim rules applicable in Chicago, which was along the same lines as the American Railway action (Tr. 1117). With a view to prevailing on the trunk lines to live up to the understanding given us when

the Lowrey tariff was first published, that no reduction [fol. 236] would be made in our allowance. In 1916 and 1917 we took up with the Chicago Switching Committee the reduction that this change would make in our allowances, and were told that it was an operating matter (Tr. 1118). When we went to the General Superintendents' Association we were told it was a traffic matter to be handled by the Chicago Switching Committee. The situation continued in effect until we were put under the Birmingham Southern plan (Tr. 1119). At the time the reclaim on intra-terminal cars was abolished no change was made in the previously fixed divisions about which I testified. The matter of correcting these divisions was taken up again in 1920, the majority of the lines claiming that the additional divisions to the originating lines should not be continued since they were not paying reclaim on intra-terminal switching. In May, 1921, the divisions were revised whereby on a two line switching movement, the originating line's division was reduced from 66 2/3 per cent to 50 per cent and on a three line movement from 50 per cent to 37.5 pre cent (Tr. 1122) but our allowance was not increased in any way. Among the trunk lines, the change benefited the delivering line. I have prepared a statement showing reclaim allowed industrial common carriers in Chicago prior to January, 1916 (Tr. 1123).

(Said document received in evidence as Exhibit No. 88.)

Mr. Barse: It is understood, I presume, Mr. Director, and if it is not, I wish to make it clear, that this exhibit relating to the question of division absorptions is objected to under my general objection.

Director Bartel: It will be so noted (Tr. 1124).

The Witness: Exhibit 88 consists of three letters; one a call for a meeting, addressed to the Standing Switching Committee, another setting forth the proceedings of a conference of that Committee with the General Superintendents' Association to consider the adjusting of per diem al- [fol. 237] lowances to switching roads in the Chicago District and the third setting forth the basis of divisions and allowances including the reclaim. The last communication explains the condition that would be inaugurated January 1, 1916 (Tr. 1125, 1126). During 1922 and 1923, up to the

date we were put on the Birmingham Southern basis, our allowance per car was $4.95 (Tr. 1127). We were allowed a reclaim of $3.96 per car on the basis of a check made of our average detention by the American Railway Association. On cars handled wholly by us within the switching district, we were allowed $4.95 a car with an average detention of 3.96 days, so that we were paying the car owner $3.96 per car without any reclaim (Tr. 1128), leaving 99¢ to cover our cost of handling the car. On a line haul car we received $4.95 for exactly the same service. I have prepared a statement showing what our additional expense for car hire would have been under the per diem and reclaim rules instead of the Birmingham Southern rules, for the years 1924, 1925 and 1926.

(Said document received in evidence as Exhibit No. 89.) (Tr. 1129.)

In view of our average detention of 3.899 as shown in the last exhibit, in actual practice under the Birmingham Southern rule, it would not have been possible for us to use foreign cars in local service, although it might be possible in isolated cases to retain a foreign car loaded in and out for sixteen days without cost to us. The same thing can be done under the per diem rules. This practice of so using foreign cars would prevent us, however, from earning credits with which to wipe out debits because we would soon be caught for the demurrage charge of $2 per day (Tr. 1130). In 1926, if we had used in local service one-fifth of the cars which we handled, one-half of them for 8 days and the other half for 16 days, we would have increased our average detention to 5.6 days, 1.581 days more than our actual detention of 4.019. Had we used but ten per cent of the total cars handled, our average detention would have been increased almost one day (Tr. 1131). I have not com- [fol. 238] puted the additional charges we would have had to pay, had we detained cars as in the above examples, but it would have been considerable. I have prepared a statement showing the number of loaded cars handled by us in inter-terminal switching wholly within the district, in 1924, 1925 and 1926.

(Said document received in evidence as Exhibit No. 90.) (Tr. 1132.)

I do not agree that a railroad should own enough cars to handle its inter-terminal switching. We originate 40% more loads from, than we receive for, our industries; of the total inbound business handled by us 18 per cent is line or revenue haul business, so that if our equipment was used on outbound traffic it would have to be returned empty to save per diem (Tr. 1133). We are not permitted under the Car Service Rules to load our own cars outbound in line haul business. Even if the car was being loaded on our railroad we would be acting as agent for the trunk line. If we load a car to a destination on the Santa Fe, we must use a Santa Fe car; we would be called down if we used one of our own cars. We would have no use for our own cars (Tr. 1134), except perhaps for use wholly in the Chicago terminal or switching district. We would be permitted to load our cars to industries in the district over other roads. I interpret the rule as releasing a terminal switching line of all obligation to furnish part of the cars to originate traffic (Tr. 1135). That is the interpretation of the rule placed on it by the American Railway Association of July 1, 1926 (Tr. 1136). That interpretation provides that orders for cars are to be placed with the loading line; that the road haul carrier has the right to furnish cars for loading on another line in switching service for movement to it; that a switching road should provide equipment when cars are loaded to a destination within the switching limits; when cars owned by the road haul carrier are available and when other foreign cars are available; that a road should not load its own equipment in switching service when the load is for [fol. 239] movement in road haul service, if the road haul line is able to furnish cars (Tr. 1137); and that road haul lines furnishing cars to switching lines are responsible for observing the Car Service Rules. That would prohibit us from using our own cars in shipping beyond the Chicago district via a line haul carrier. We must use another carrier's car and pay per diem, or some other basis of settlement. The rule applies to interterminal (Tr. 1138) loading. As I understand the rule, the Pullman Railroad would be permitted to use its own cars in interterminal business; and in road haul business if we could not get a car from the road haul connection, not in recent years has it happened that we cannot get one (Tr. 1139). Our outbound business

destined Chicago switching territory year in and year out runs about the same, consisting of seven commodities; ice, paint, scrap iron and steel, building tile, car wheels shipped loose, wheels mounted on the axle, and electric storage batteries, wet, with a few hundred cars during the year of farm products, such as sugar beets, onions and hay. In a previous exhibit we show that during three years, of the cars loaded out by us destined to the Chicago switching district and also for line haul movement that is outside of the Chicago switching district 18,443 cars out of 25,822 came to us loaded, showing they were reloaded by us after they were unloaded. Of 11,714 cars which we originated and which moved to the switching district all came to us under load and were reloaded, leaving of the 18,443 cars 6729 cars destined to line points. If we were required to own cars for these 11,714 loads, those cars would have gone back empty and the switching of empty cars in the Chicago district is not a thing to be desired (Tr. 1140). During the same three years, we received 46,150 cars of which 27,707 were returned empty. In the same three years we forwarded 1,914 loads to the Chicago Junction for re-forwarding. Had this traffic been in our own cars they would have been switched back to us, probably empty (Tr. 1141). We [fol. 240] also forwarded 2,295 carloads to the store yards of various Chicago carriers, which traffic had to move in the cars of those carriers. We also forwarded 1,190 cars of tile in cars of the line which delivered the traffic. Had these loads been placed in our cars, they probably would have come back to us empty (Tr. 1142). During the same period we forwarded ice to the Chicago Junction at the Stock Yards; storage batteries to coach yards in the Chicago district and wheels on axles. If this traffic had been in our own cars they would have had to come back empty (Tr. 1143). If we owned equipment we could not prevent it being loaded beyond the Chicago district. In that case we would receive the usual per diem rate of $1 per car. Since the first two or three months back in 1923, we have had very few disputes under the Birmingham Southern Rules. We have not had one-tenth the disputes that prevailed under the Per Diem Rules (Tr. 1144). Under our present plan, we make settlement with a few direct connections, while under per diem we had disputes with roads all over the United States. We have at all times been governed by the Car Service

Rules to the same extent as under the Per Diem Rules Agreement. We are still an associate member of the American Railway Association. The only difference under the present plan is that we make car hire settlements on a different basis. Outside of this, we have at all times felt obligated to operate in accordance with the Car Service and Per Diem Rules (Tr. 1145). The amount received by the Pullman Railroad from its trunk line connections for its service does not include any amount to cover car ownership or car hire. The present division sheet provides (Tr. 1146) that the allowances to the terminal carriers are divisions of freight charges only and have no bearing on per diem reclaim allowances.

[fol. 241] Mr. Towner: I renew my motion. The only effect of what Mr. Morrison has said is to draw the distinction between per diem as an operating matter and the allowance of divisions as a traffic matter (1147). The compensation that is collected includes every operating expense that the Pullman Railroad incurs or that is incurred in the operation of the railroad.

Director Bartel: He was asked whether or not the amount the Pullman receives for its services includes any amount to cover car ownership or car hire.

Mr. Towner: Obviously, it does; it includes an allowance for every expense his railroad incurs in performing that particular service.

Director Bartel: Well, the witness says it does not, and he undertook to explain his answer by quoting from the tariff. Now, if his conclusion from the tariff is wrong, of course the record will so indicate (Tr. 1148).

The Witness: Various roads in Chicago, besides making payments to one another as divisions under the tariff, pay per diem or reclaim one to another separately on the same movements. Reclaim is paid on a line haul business. There is no reclaim on interterminal business (Tr. 1149).

Mr. Towner: I think that this is of vital importance for the reason that we get hour after hour of this testimony with respect to divisions. This is not a division case; these railroads are either railroads or they are not railroads. If they are railroads, the amount of money they are collecting

from the public and from other railroads ought to pay them for every service they perform. The loading of a car, either by owning it or renting it, is an operating necessity and the amount they receive certainly pays them for it, and if it does not the thing for them to do is to increase their income.

Director Bartel: I have passed on the question, so what is the use of discussing it. Proceed.

[fol. 242] The Witness: My answer was with reference to our revenue on traffic handled both in line haul service as well as switching (Tr. 1150). I have prepared a sample of forms showing in detail how the Pullman reports car detention on cars diverted by it and the manner in which its interchange reports are handled (Tr. 1151).

(Said document received in evidence as Exhibit No. 91.)

Part A of Exhibit 91 is a daily interchange report of cars covering a North Western car delivered to the Pullman by the Belt (Tr. 1152). The other parts of the exhibit are reports furnished on other cars interchanged between the Pullman and other railroads (Tr. 1153, 1154, 1155). The diversion reports included in the exhibit cover cars coming to us from one line and diverted to another line. The remaining samples in the exhibit are interchange and diversion reports on various cars interchanged between the Pullman Railroad and other railroads (Tr. 1157). Our old accounts with our connections other than the Belt Railway of Chicago were all settled in accordance with the Commission's authorization in its decision at 61 I. C. C. 637 (Tr. 1159). The Belt account is held in abeyance pending the outcome of this case (Tr. 1160). I am familiar with the work of the committee appointed to determine the switching allowance to Chicago switching roads. They excluded car hire in determining the amount of the allowance. I do not know what they did on other roads. The allowance they fix is all we receive on all business, terminal as well as road haul (Tr. 1161). On interterminal traffic to industries on the Pullman Railway, the Belt Railway furnishes cars of companies other than the ones owning the Belt. [fol. 243] In June, 1927, on interterminal business originating on the Belt, 50% of the cars (Tr. 1163) coming into the Pullman road belonged to owners other than the proprietary lines of the Belt Railway (Tr. 1164).

Cross-examination:

The figures in my exhibits are intended to refute the figures set up in Exhibits 67 and 68. The demurrage collections shown on Exhibit 76 as being collected from the proprietary industries include all demurrage collected from those industries (Tr. 1165). In 1925 73.21% of all our demurrage was collected from proprietary industries. This does not mean that those industries had greater detention than other industries (Tr. 1166). You would have to take that Exhibit 76 and use it in connection with exhibits 83 and 84 to show how it happened that if the detention at the affiliated industries was less in days than at the other industries, 73 per cent of the total demurrage accrued on cars at the former industries; it could readily be figured out by taking the two statements—or that is, the working sheets of the two statements—and compiling the information that you would get from those two. I can do that and I will be glad to explain how three-fourths of the demurrage accrued on less than half of the detention. On Exhibit 79 the demurrage shown payable to connections is the demurrage due them under the Birmingham Southern Rules which we collect on the National Demurrage Code from the industries (Tr. 1167). It is really the amount paid by the Pullman Railroad for car hire under the Birmingham Southern rules. The figures for all the years in that exhibit are taken from our books where we keep an accurate record [fol. 244] of our payments and show the payments that we made for car hire (Tr. 1168). The exhibit figures are just a reproduction of our records. On page 1 of Exhibit 81 the loads shown as terminal loads are those switched in line haul or revenue business other than interterminal service (Tr. 1169). Eighteen cars handled those 32 loads, some in and some out. We had 36 movements on 18 cars and 32 of them were under load, the balance empty (Tr. 1170). I have no idea as to whether or not the reclaim to the Belt Railway of $3.96 is too high. The purpose of the exhibit was to indicate that the Belt Railroad paid the car owners an average during the year 1925 of $3.80 odd, or three dollars and eighty odd cents per car, and they reclaimed in the first instance on the Santa Fe for $3.9[illegible]. I do not think that the reclaim paid the Belt was wrong.

It is all right if the lines are agreeable to it. The profit shown as arising on the Belt lies in the fact that our average detention was $3.82, and the Belt reclaimed for $3.96 (Tr. 1171), and also may have reclaimed for their intermediate switching reclaim and as a matter of fact did not pay any per diem as an intermediate road. Our average detention for 1925 shown on Exhibit 87 was 3.86. Considering only the cars shown on Exhibit 81, the average detention on the Pullman Railroad was 3.08 days (Tr. 1172). The reason for the difference in the figures and why the figures for the year are higher is because more cars are included. I made no computation to find out how the Belt Railway came out on reclaim through the year 1925 and cannot say that because it made a profit on the 139 cars in Exhibit 81 it made a profit on the rest of them. So far as I know, it is possible that the Belt may have lost money on the year's business (Tr. 1173). I do not claim that the 139 cars on Exhibit 81 are typical of the way the Belt came out during the entire year. Exhibit 83 was computed from our records and shows detention under the American Railway Association rules. The day was started at midnight [fol. 245] and the industry detention was figured on the same basis as railroad detention (Tr. 1174). I want to correct that as the industry detention is figured from 7 A. M. on the demurrage basis (Tr. 1175). The industry detention is figured from our demurrage records and detention between a car's release and its being pulled out went into railroad detention. We did not charge Sundays and holidays to the industry detention (Tr. 1176). We charged those days to the railroad detention. The car detention shown in the last column of Exhibit 83 is the total detention of the car on the Pullman rails including the industry detention (Tr. 1177). I think you will find the railroad detention on Exhibit 84 (Tr. 1178). The detention of 1.124 days is the time the car was held by the railroad but was not held by the industry (Tr. 1179). On Exhibit 83 the figure of 3.262 is the total time the car was on the Pullman Railroad (Tr. 1180) and includes the industry detention of 2.138 days. The figure of 1.124 days in Exhibit 84 is the time the car was held on the railroad in excess of the time that it was actually charged to the industry. Exhibit

83 covers the year of 1925 and Exhibit 87 covers only four months and this accounts for the difference between the average detention in 1925 of 3.262 shown on Exhibit 83 and the average detention of 3.867 shown on Exhibit 87 (Tr. 1181. Exhibit 84 only covers cars on which we would have to pay per diem if we paid anything. On Exhibit 89, I have figured detention by taking the total number of per diem cars handled in terminal and interterminal switching for the years 1924, 1925 and 1926 and figured the average detention (Tr. 1182). I figured this detention on the per diem basis, and in showing the additional car hire expense under the per diem system I have made full allowance for any reclaims (Tr. 1183). The Pullman Railroad wants the present basis of car hire settlement continued. I would object to the per diem rules under the present plan as existing at Chicago. I do not think we should pay per diem [fol. 246] on foreign cars in interterminal service unless I am made whole for the per diem while the car is on my line (Tr. 1187). When I load a car from an industry on my line to an industry in the Chicago switching district, I think the car owner is entitled to per diem but I do not think the Pullman Railroad should pay it. Under the present Code, if a car was handled from the Burlington Railroad destined to an industry on the North Western in interterminal service, each carrier would pay per diem while the car was on its lines, whereas under the Birmingham Southern Rules the Pullman gets free time on an inter-terminal car from the Burlington destined to an industry on our line (Tr. 1188). My justification for the difference between a car handled in connection with my line and a car which might be handled in connection with another trunk line is that the switching charge is not divided by the trunk lines with us on the same basis that they divide between themselves. It resolves itself into the fact that we do not get a large enough payment for the service performed (Tr. 1189). On a car which originated on the Belt Railway, going to an industry on the Pullman, we would pay no per diem under the Birmingham Southern Rules and the Belt would stand the per diem. If the car originating on the Belt went to an industry on the North Western, each road would pay per diem while it had the car. On the car coming to us the

Belt keeps $10.05 of the $15 charge and gives me $4.95 but on a car to the Burlington it gets only $7.50 or 50 per cent of the $15 charge. Per diem is not included in our switching rate but is included in the switching rate and in the division of the rate as between the Belt and the Burlington (Tr. 1191). On a car from the Chicago, Burlington & Quincy via the Belt to our Railroad, we would pay nothing under the Birmingham Southern basis and the Belt assumes whatever burden there may be of per diem in addition to its own (Tr. 1192). If the car comes from the Burlington via the Belt to the North Western in inter-[fol. 247] terminal service, the Belt receives the same amount of revenue but is relieved of the per diem of the North Western. My justification for a diverse treatment of the Belt in these two cases is this: if a car goes from the Burlington to the North Western via the Belt, the switching charge is $18.00. The North Western gets 37.5 per cent of the $18. They can afford to pay their per diem, because they are getting 37.5 per cent of $18, while I am getting $4.95. In both cases the Belt gets the same amount of money and in one case pays only its own per diem, but in the other case pays ours also. I am not interested in where the Belt comes in (Tr. 1193). When the Pullman was put under the Birmingham Southern Rules, the Belt Railway, which delivered cars to it, became the road to pay per diem to the owner. It was agreed that it would be allowed to make the same reclaim as the Pullman formerly had, which was $3.96 (Tr. 1196) plus an intermediate reclaim of $1. When the car was returned, the Belt also received another dollar intermediate reclaim. This accounts for reclaim of $5.96 which I mentioned previously. All the mileage of the Pullman Railroad is in the Chicago switching district (Tr. 1197). In 1912, when the Pullman was admitted to the Lowrey switching tariff, our local rate was $3 per car on all commodities of all weights. The Lowrey division sheet provided that our allowance should be equal to our local rate: In 1918 it was increased to $3.75 by the Railroad Administration, which also increased our operating expenses about 100 per cent, so we found we could not do business for $3 per car, so far as our local rates were concerned. We filed tariffs increasing our local rate to 1¢ per hundred pounds. The $3.75 allowance con-

tinued until 1920 (Tr. 1198) but that made no difference in the allowance that the trunk lines made us. It was then increased to $5.25 and in 1922 was reduced to $4.95. Our allowance was first fixed on the basis of our local rate. In [fol. 248] 1912 we were on a demurrage basis with 4 days free time. In 1912 we were put on the per diem basis with 5 days reclaim on inter-terminal switching (Tr. 1199). When our local rate was established we were either on the demurrage basis or reclaim basis. If the Birmingham Southern basis was abolished, the best plan would be to go to per diem with reclaim on every car equal to our average detention, which would include inter-terminal switching (Tr. 1200). If we paid straight per diem on inter-terminal business, I know of no reason why we should not get half of the switching charge on a two line haul (Tr. 1201). I would prefer to have the increase in our divisions provided for in the Commission's order, requiring the trunk lines to give us the same basis of divisions as they give to others.

Director Bartel: I do not think such a thing is possible in this case though; do you?

The Witness: No, not in this case.

The Witness: When our division was ascertained by the Carriers' Committee car hire was excluded from consideration (Tr. 1202). I do not know what our cost was of keeping records of the cars on which we were going to reclaim while we were on the per diem basis (Tr. 1203).

Mr. Burchmore: On behalf of the Manufacturers Junction Railway, I wish to say that we are not asking for the abolishment of or the prescribing of any form of car hire settlement, but we are asking that this company be permitted to have, with its connections, the basis of car hire settlement commonly observed among railroads in this country.

[fol. 249] Walter C. Ransom was called as a witness and, being duly sworn, testified as follows (Tr. 1205):

I am Superintendent of the Manufacturers Junction Railway in charge of operation and have been for seventeen years. I testified for this company in the 1922 hearings

preceding the Commission's report fixing the Birmingham Southern rules (Tr. 1206). There has been no material change in our methods of operation nor in the industries, etc., since then. We connect with the same railroads and have about the same trackage and handle about the same traffic. We have a universal freight station still in operation, serving about 250 customers, exclusive of concerns having connection with the Western Electric Company or its Subsidiaries (Tr. 1207). In May, 1927, the traffic of the Western Electric and its affiliated industries was 57.2% of our total traffic. We have a team track and station track capacity of 45 cars, and the Western Electric Company has spotting track of 445 cars capacity and a storage track holding 100 cars. The Manufacturer's Junction's yard capacity for switching purposes is 300 cars in addition to its line haul tracks and to the leads and other tracks and in addition to the freight house team tracks (Tr. 1208). Our company has operated under the Birmingham Southern plan since it was established by the Commission. We have had no advantages under it that we did not have before then (Tr. 1209). So far as the Manufacturer's Junction is concerned, I do not think it is possible to make an exact comparison between the results of that plan and the per diem plan. In making the comparison that we did by applying the effects of the plan against the known facts of the traffic, we found no substantial difference in money results (Tr. 1210). There is no more opportunity to abuse equipment under the Birmingham Southern rules than under per diem. There has been no abuse under either plan so far as we are concerned. We have given no preference to the Western Electric Company or any other shippers under either plan. We are a party to the demurrage tariff [fol. 250] and our shippers have paid demurrage under it. I supervised the preparation of an answer to the questionnaire which the Commission served on our railroad (Tr. 1211). I also filed a correction of part of the return, and as corrected the return is true and correct. There has been no car shortage traffic congestion or severe weather in the Chicago district since the Birmingham Southern modified plan was established, and I do not think that it has had a complete tryout under abnormal conditions (Tr. 1212).

Cross-examination:

I cannot say whether or not we showed on the questionnaire that we use foreign cars in local or interterminal service, but we use some cars in local service (Tr. 1214). I think we should pay per diem on foreign cars used in local service but not on those used in interterminal service. I do think that the owner of a car used in interterminal service is entitled to get something for the use of the car (Tr. 1215). That would naturally have to be paid by us, but I think we should be cleared of per diem in some manner. I concede the right of the owner to get his money (Tr. 1216). I would say that our average detention on intra-terminal cars is practically the same as it is on road haul cars. I have not referred to any figures, I simply made the statement of fact that it is not materially different (Tr. 1218). I think that the four months used in the answer to the Commission's questionnaire were typical of the whole year (Tr. 1219). We have no peculiar circumstances in our intra-terminal business. Our figures for the four months of 1925 show about the same average detention (Tr. 1221). On our interterminal switching we are in the same situation as the Pullman Railroad in so far as the division of the rate is concerned. On the return to the questionnaire filed by the Manufacturers Junction the detention is figured on the Birmingham Southern basis (Tr. 1223). The time started at 7 A. M. and excludes Sundays and holidays. We are willing to accept the average detention on all cars shown in Exhibit 67 as ours. Insofar as the intra-terminal cars are concerned, the average is not materially different from the road haul cars as shown on Exhibit 67—taking into consideration the formula used in arriving at that figure (Tr. 1224).

[fol. 251] GEORGE MITCHELL was called as a witness and, being duly sworn, testified as follows (Tr. 1225):

I am auditor of the Manufacturers Junction Railway Company in charge of the accounts. The books of the Company are kept in accordance with the Commission's rules. I have prepared a statement of the income figures and other statistics taken from the books of the Company.

(Said document received in evidence as Exhibit No. 92).

The investment figure road and equipment, is the book figure of investment (Tr. 1227). The Commission has placed a tentative valuation on the property of the Manufacturers Junction.

Q. And what is the tentative value found by the Commission?

Mr. Barse: That is objected to as immaterial to this proceeding.

Director Bartel: I agree with you, but let us see how it compares with this.

The Witness: The tentative valuation as of June 30, 1919 of owned and used property is $801,000 (Tr. 1228). The Company is protesting this value, and since valuation date has expended approximately $300,000 on additions and betterments (Tr. 1229). The figures in Exhibit 92 include all of the car hire charges and receipts. The amended return to the Commission's questionnaire was prepared by me and is correct (Tr. 1230). No depreciation is deducted from the investment figure shown in Exhibit 92.

J. Fred Sheehy was called as a witness and, being duly sworn, testified as follows:

I am President and General Manager of the Chicago Short Line Railway Company and concur in the statement made by Mr. Morrison for the Pullman Railroad. The Chicago Short Line stands in substantially the same position as it did at the previous hearing, that is, that as a common carrier it should be entitled to all of the rights and privileges of a common carrier. I have no objection to the [fol. 252] restoration of the per diem rules (Tr. 1231), but this road is entitled to and insists upon a reclaim of free time on interterminal cars as well as on cars handled in terminal service, switching, or an increase in the interterminal divisions, to cover the per diem or demurrage debits as the case may be.

Cross-examination:

I am willing to have the per diem rules reestablished but want either a reclaim or interterminal business or a suffi-

cient division to cover the car detention. Either thing would be statisfactory (Tr. 1232). It is just a question of getting money enough to pay a debt which I concede is proper (Tr. 1233). I consider that debt in the case of per diem on interterminal business is the same as debt in the case of per diem on line haul business. On our interterminal traffic we are in the same situation as the Pullman and the Manufacturers Junction and get the same $4.95 division out of the switching revenue (Tr. 1234). We would save money by abolishing reclaim and putting this revenue in our division of the switching charge, avoiding all this keeping of records of the cars we are giving to reclaim on, and making out our reclaim bills and making reclaim settlements, and arbitrating differences and all that sort of thing (Tr. 1235). There is a good deal of accounting and checking in getting up reclaim bills. I think I could estimate the cost of doing that (Tr. 1236).

Director Bartel: The switching reclaim rules in the Chicago switching district will be received as Exhibit No. 93.

(Said document received in evidence as Exhibit No. 93.)

W. H. GILES, having been previously called as a witness, was recalled and testified:

Exhibit 93 includes all changes in the switching reclaim rules in the Chicago switching district up to date (Tr. 1237). These rules are now known as the Switching Reclaim Rules of the General Managers' Association of Chicago. Rule 1, corresponds to A. R. A. Per Diem Rule 5 [fol. 253] (Tr. 1238). Rule 9 provides that the formula to be used in arriving at the amount of reclaim allowance to which each road is entitled under Rule 1 shall be determined by the General Managers' Association. No formula has been agreed upon by that Association. The 10 day provision was made by unanimous local agreement between the Chicago roads in 1923 and allows 10 days reclaim on a car loaded one way and 20 days on a car loaded in and out in road haul service (Tr. 1239). That period was used in

making the last check in 1923. Exhibit 93 does not show the reclaims received by the direct connections with the Chicago roads in settlements under the Birmingham Southern basis, nor the average detention of the various non-controlled roads (Tr. 1240).

A. G. NUTT was called as a witness and, being duly sworn, testified as follows:

I am Freight Agent of the Illinois Northern in Chicago (Tr. 1244). I have been in railroad work for 20 years and in 1923 installed the present Birmingham Southern Rules on the Illinois Northern (Tr. 1245). That road filed an answer to the questionnaire issued by the Commission.

Mr. Browder: I understand, Mr. Director, that that questionnaire is a part of the record already.

Director Bartel: This is true.

The Witness: The Illinois Northern is located in one of the most congested industrial areas in Chicago. It operates a total of 29.30 miles of track, of which 1.95 are main track (Tr. 1246). It is engaged exclusively in switching service, furnishing terminal, interterminal, trap car, local or intra-terminal and intermediate service (Tr. 1247). Its switching service is substantially like that of the various trunk and Belt lines in the Chicago district. It has 8 locomotives [fol. 254] and 69 freight cars which are interchanged with foreign roads. The average number of employees is about 185. Only one industry on the road, the Barrett Company, owns private cars. The road is a member of a number of railroad associations (Tr. 1249). It was formerly a member of the Per Diem Agreement of the American Railway Association but was suspended as a result of the Commission's decision at 78 I. C. C. 475, which condemned the per diem reclaim method of settlement with certain industrial roads, and substituted the modified Birmingham Southern Rules which have been in effect since. I am not sure that the road is a subscriber to the Interchange Agreement of the A. R. A. (Tr. 1250). I have prepared a map of the Illinois Northern Railway (Said map received in evidence as Exhibit No. 94). The Illinois Northern tracks are

shown in red and the top of the map is north. The tracks shown in yellow indicate foreign tracks used in interchange service (Tr. 1251). The road has two classification yards with capacity of 250 cars and 450 cars. It has four team tracks (Tr. 1252). It has two track scales, one near its 26th Street yard and one near its 33rd Street yard (Tr. 1253). The map shows the congestion and complexity of operation on the railroad. Some of the tracks are elevated but the road is crossed by many streets at grade where traffic is heavy (Tr. 1254). Seven systems of tracks of other railroads also cross its tracks at grade where traffic is heavy (Tr. 1255). Parts of the Illinois Northern are used jointly by other railroads (Tr. 1257). All this delays traffic (Tr. 1258). The various points of interchange with connecting carriers are shown in large red letters on Exhibit 94 and our connections are named in answer to question 8 in the Commission's questionnaire (Tr. 1259). While in foreign yards our engines are under control of the [fol. 255] foreign yard masters and are delayed because of congestion from concurrent interchange of many other roads, the present points of interchange with connections result from experience and represent the best possible arrangement to handle the traffic. In some cases we have a yard to yard delivery. Sometimes we make deliveries and sometimes the connections make deliveries (Tr. 1261). Considering geographical conditions, the road is efficiently operated. The roadbed, power and tracks are kept in the best possible condition (Tr. 1262). The decrease in detention shown on Exhibits 67 and 68 demonstrates the increased efficiency of the Illinois Northern. The average detention was reduced from 3.66 days in 1923 to 3.27 in 1924, in 1925 to 3.06; the average detention on terminal and interterminal cars was reduced .6 of a day between 1923 and 1925. I have prepared a statement showing the industries served by the railroad (Tr. 1263).

(Document received in evidence as Exhibit No. 95.)

This exhibit shows the private siding, team track, intermediate and freight house shippers and the number of cars handled for them in 1925. This exhibit shows that in 1925 the road handled 49,395 cars for its 46 private siding shippers, 1,359 cars for its 41 team track shippers, 16,841 cars

for its 725 L. C. L. shippers and 15,714 cars for its 2,152 intermediate shippers, a grand total of 83,309 cars for 2,964 shippers. By "intermediate shippers" I mean shippers of cars moving in intermediate service over the Illinois Northern between two connecting lines (Tr. 1264). For 1925 we had 12,298 wheelage cars and 8,699 empty intermediate cars. The exhibit does not show them. We get our traffic through solicitation. I have prepared a statement showing the distances cars are handled between industries and interchange points with connecting lines.

(Said document received in evidence as Exhibit No. 96.) (Tr. 1265.)

[fol. 256] It shows the respective distances from each of our four public team tracks and from our universal freight station known as McCormick Station, and from each of the 46 spur track industries to the respective points of interchange with each of our 14 connections. The distances shown vary from a quarter of a mile to seven miles and do not include the movement to and from the classification yard, or yards, or to and from the track scale when it is necessary to weigh a car. The minimum interchange haul for each industry is indicated by the letter "a" and the maximum by the letter "b". The shortest interchange on the exhibit is .25 miles and the maximum is 7 miles and there are many varying from 3 to 5 miles (Tr. 1266). I have prepared a statement of the financial history of the road for the years 1922 to 1926 inclusive.

Mr. Barse: It is objected to on the ground of irrelevancy.

Director Bartel: It will be received subject to your objection.

(Said document received in evidence as Exhibit No. 97.)

This exhibit shows the net profit or loss per year and the amount per annum which should have been earned based on a return of 5¾% of the tentative valuation of the road, plus additions and betterments (Tr. 1267). In none of the five years has this return been earned. During the entire five years the road had a net profit of $184,514.72, whereas if its rates and divisions had been based on its valuation, the road would have earned $498,279.99 or 5¾%.

Mr. Barse: Maybe I am being unduly technical, but I move to strike out the testimony of the witness.

Dr. Bartel: I do not see the pertinency of this testimony either, because we are not going into the question of whether the Illinois Northern Railway is making sufficient revenue here. It is purely a question of car hire (Tr. 1268.)

[fol. 257] Mr. Browder: Yes, but one of the contentions of the connections has been the terrific sums that these roads are making out of the car hire.

Director Bartel: This is not limited to car hire.

Mr. Browder: But possibly in connection with other figures.

Director Bartel: That is the reason I am letting it go in. I do not know how you intend to connect it up, but I do not see the pertinency of it at this time.

Mr. Burchmore: I would like to raise the question right here: We offered something of a similar nature. I understand that one of the elements of two of the old cases that are reopened was the charge that the owners of these railroads were realizing something improper by reason of the fact that they had this arrangement now they are not realizing anything (Tr. 1269).

Director Bartel: That is merely on car hire settlements.

Mr. Barse: Yes, sir.

Mr. Burchmore: Yes, and that was one of the basic reasons as I understand it, for interfering with the car hire settlements—that the owners of these roads, being industrial roads, might realize something improper (Tr. 1270).

The Witness: I have prepared a statement showing the revenue cars handled for various industries, and segregated between the controlling industry and other industries.

(Said document received in evidence as Exhibit No. 98.)

This exhibit shows the total number of revenue cars handled for the controlling industry, the International Harvester Company, and other industries, for the years July 1, 1906, to the last six months of 1925 inclusive (Tr. 1271). The non-controlled traffic has increased materially in volume since 1907. Beginning with the year ending June 30, 1913, the Harvester Company's percentage has not exceeded 33.2 per cent of the total in any year. Moreover

for the fiscal years ending on June 30, 1922 to 1925 inclusive, the Harvester percentage varied from 18.1 per cent to [fol. 258] 22.5 per cent per annum, while for the six months ending December 31, 1925, the Harvester percentage was 26.9. The Illinois Northern publishes a demurrage tariff and assesses demurrage directly against its industries (Tr. 1272). On Exhibit 98, I have counted as two cars the cars loaded in and out as revenue loads. The cars listed as "Other revenue cars" were handled in intermediate service and on a wheelage charge (Tr. 1273). The wheelage includes loads and empties. Cars handled on a wheelage charge are in the possession of the carrier performing the service over the Illinois Northern and were not handled by the Illinois Northern (Tr. 1274). The first two columns show cars actually pulled by the Illinois Northern. The third column shows cars which are moved over the Illinois Northern tracks by the locomotive of some other road, with the exception that that column includes the intermediate traffic of the Illinois Northern and the empty cars handled by it in intermediate service as well as the empties handled by other carriers over our rails, under trackage rights (Tr. 1275). The Illinois Northern assesses and collects demurrage under the uniform demurrage rules. Under our tariff, industrial detention of cars is settled for under the straight demurrage plan or the average demurrage plan, as the industry desires. Where an industry has the average agreement it has the benefit of interchanging credits and debits. An industry may offset debits accruing on the cars received by us from one road by credits earned on cars received by us either from that road or another (Tr. 1279). I have prepared an exhibit showing the extent to which our industries operate under the average agreement.

(Said document received in evidence as Exhibit No. 99.)

This exhibit compares the number of industrial cars handled under straight demurrage with the number handled under average agreements for 1925. 47,822, or 94.2% of the total loaded industrial cars, 50,754, were handled to and from average agreement shippers while 2,932 cars or 5.8 per cent were handled for straight demurrage shippers (Tr. 1280). I have prepared an exhibit showing the demurrage [fol. 259] collected from average agreement shippers and from straight demurrage shippers, and segregating the

average demurrage collected from controlling industries and from other industries.

(Said document received in evidence as Exhibit No. 100.)

From July 1, 1923 to December 31, 1925, the total demurrage collected from all industries was $14,804, of which $5,776 was paid by straight demurrage shippers and $9,028 by average agreement shippers. Of the $9,028 paid by the average agreement shippers $450 was paid by the International Harvester Company, the so-called controlling industry, and $8,578 by all the other average agreement shippers (Tr. 1281). Exhibit 101 is a study of industrial detention on terminal and interterminal cars on the Illinois Northern for certain months in 1922, 1923 and 1925. The average detention on all industries was 1.78 days in March and June 1923; the detention of the affiliated industry was lower in 1922-1923—1.65 days—than that of all other industries in 1925, which was 1.66 days. The detention of all industries was lower in 1925 than it has ever been in the history of the road and is too low, we believe, to be regarded as representative of average conditions (Tr. 1282).

(Said document received in evidence as Exhibit No. 101.) (Tr. 1283.)

As between the per diem rules and the Birmingham Southern Rules, the Illinois Northern saves about $50 per month in stationery. The cost of policing demurrage collected from shippers is substantial. The clerical hire alone is about $200 a month (Tr. 1285). The railroad must sue for its demurrage when necessary.

Director Bartel: I do not yet see the pertinency of this (Tr. 1286).

Mr. Towner: I did not know there was any question here as to who was to keep demurrage collected from shippers.

Director Bartel: I did not either (Tr. 1287).

[fol. 260] Mr. Browder: I should like to proceed with about one paragraph more.

Director Bartel: All right. Go ahead, but I have difficulty in seeing the pertinency of it (Tr. 1289).

The Witness: Moreover, the cases before the Commission are not infrequent (Tr. 1290). At times a large part of all demurrage accrues on cars constructively placed. A

study made in January 1920 showed that over 50 per cent of the cars on which demurrage had accrued were held either on our team tracks or other railroad tracks of the Illinois Northern. During that month, we collected $5,181 demurrage from industries; on cars constructively placed at least one extra switch is required. Frequently the industry can receive at one time only a part of the constructively placed loads; in such case two or three extra switches may be required. None of this extra expense is compensated for except in the demurrage charge (Tr. 1291). The Illinois Northern interchanges its cars with other roads. I have prepared a statement showing the cars owned and interchanged by it as compared with the number of cars owned and interchanged by non-controlled switching lines in the Chicago district (Tr. 1292). By "non-controlled lines," I mean lines not controlled by industries.

(Said document received in evidence as Exhibit No. 102.) (Tr. 1293.)

The ownership dates on this exhibit were taken from a recent equipment register (Tr. 1294). The Illinois Northern owns and interchanges relatively as many cars as are owned and interchanged by the non-industrial switching lines in the district (Tr. 1295). I have prepared a statement showing the loaded cars handled by the Illinois Northern in terminal, inter-terminal, sub-station, trap-car and intermediate switching service in 1924 and 1925 (Tr. 1298).

(Said document received in evidence as Exhibit No. 103.)

I direct attention to the lower percentage of interterminal traffic handled by this road, which was 11.43 in 1924 and [fol. 261] 12.92 in 1925. The figures on this exhibit are taken from Exhibit 67 (Tr. 1299) except that there is a difference of 100 cars on inbound interterminal movement. That changes the grand total to read 64,117 instead of 64,017 and would change our percentage of interterminal cars slightly (Tr. 1300). My exhibit revises Exhibit 67, as having the correct figures. I am revising my own exhibit (Tr. 1301). I have prepared a statement showing for four months of 1925 the total number of interterminal cars handled, inbound and outbound, the average loading and separately, the number of two and three line cars handled inbound and outbound, and the average loading.

(Said document received in evidence as Exhibit No. 104.) (Tr. 1302.)

73% of the two line and three line haul interterminal cars were handled inbound (Tr. 1303). Terminal and interterminal cars are handled in the same trains, by the same crews and given the same service (Tr. 1304). The traffic interchanged by the Illinois Northern is typically long haul traffic (Tr. 1307). Some industries do a substantial export business; about 2700 cars are exported annually and 1900 imported from one industry alone (Tr. 1308). The Illinois Northern on a minimum car handled in terminal switching receives $6.40. A Trunk line or Belt line competitor would receive on the same car $12 (Tr. 1309). The business of the Illinois Northern is highly competitive with other railroads in the Chicago district. (Tr. 1310). I have prepared a statement showing in cars the amount of this competition for the year 1925. (Said document received in evidence as Exhibit No. 105). 63% of our traffic is competitive (Tr. 1311). The statement includes revenue loaded cars but does not include empty cars other than empty revenue cars. (Tr. 1312). If a car is handled loaded in one direction and empty in the other direction, it is counted as two cars (Tr. 1315). We consider that all the cars from the Crane Company, for example, are competitive cars, although we would have to give them to the Belt to get to the Erie with which we do not directly connect (Tr. 1316). [fol. 262] I have prepared a statement showing the hire of freight train cars, credit or debt balance showing basis of allowance from December 31, 1917 to June 30, 1923.

(Said document received in evidence as Exhibit No. 106.) (Tr. 1317.)

In connection with that exhibit, when the five day reclaim was in effect there was a credit balance of $46,111.45 in 1917 and $25,657.60 in 1918. At that time fractions were disregarded and we were given five days on a check which showed that the average detention was 4.14 days. The exhibit includes reclaim of one day on intermediate cars which was then allowed. The credit or debit balance also includes per diem earned on Illinois Northern cars interchanged with foreign roads. I have prepared a statement showing per diem earned on Illinois Northern cars (Tr. 1318) from

1917 to 1925 (said document received in evidence as Exhibit No. 107). We receive straight per diem on our cars while on foreign lines. I have prepared a statement showing per diem rates in effect since 1902, which except for the last two years were taken from the Commission's decision in In Re Private Cars, 50 I. C. C. 652 (Tr. 1319).

(Said document received in evidence as Exhibit No. 108).

I have prepared a statement of the present terminal switching reclaim allowances allowed to various railroads in the Chicago district on per diem cars (Tr. 1320).

(Said document received in evidence as Exhibit No. 109.)

There is also uniform reclaim in effect at the present time on sub-stations and trap cars (Tr. 1321). It amounts to 2½ days. There is also a one day uniform reclaim on intermediate switching (Tr. 1322). I have prepared a statement showing the total demurrage paid to all our connections for excess detention in 1925.

(Said document received in evidence as Exhibit No. 110). (Tr. 1323.)

This exhibit shows the demurrage which we paid for car hire under the Birmingham Southern Rules. In that year we paid a total of $1764 to our 14 connections (Tr. 1324). There is no cross hauling of empties on the Illinois [fol. 263] Northern. I have prepared a statement showing the use of available equipment on the road in four months of 1925. (Said document received in evidence as Exhibit No. 111). All good order cars are used whenever possible, but we have to order considerably more empty box cars (Tr. 1327). Only open top equipment for which we have insufficient loading or bad order cars are returned empty to connections. That was our practice under the Per Diem Rules and the Birmingham Southern Rules have nothing to do with that. In 1925 we repaired 8,071 foreign cars. In the interest of car service and railroad efficiency we repair car owner's defects as well as user's defects. These repairs and the charges therefor are regulated by the Mechanical Division Rules of the Association. On Exhibit 111, 59.5% of the inbound loads were loaded outbound in 1925 (Tr. 1328).

Cross-examination:

On Exhibit 105 all the carload freight handled through our freight station is competitive with other roads. All of that freight could be taken to any of the Chicago freight houses (Tr. 1330). On Exhibit 111, 59.5% of the cars received under load were returned loaded. The other 40% were returned empty, as we haven't sufficient loading for open top equipment (Tr. 1331). For the balance of our loading we bring in empty cars of a different class. I am unable to say whether or not the 1926 additions and betterments on Exhibit 97 are depreciated (Tr. 1332). The number of wheelage cars handled by the Illinois Northern for the fiscal year ending June 30 from 1916 to 1925 totaled 107,274 (Tr. 1333, 1334). The detention on cars handled in four months of 1925, as shown in the answer to the questionnaire of the Commission, is representative of the detention for the entire year. We make no settlement on private cars. We pay no mileage on them and do not count them under the Birmingham Southern Rules (Tr. 1335). Under per diem and reclaim cars are not eliminated in checking reclaim because they earn demurrage. I think [fol. 264] that is correct. With respect to divisions on interterminal switching, we are in the same position as the Pullman Railroad (Tr. 1336). We get $6.40 out of a total of $15. on a two line haul. We do not know why we get $6.40 and the other roads only get $4.95 (Tr. 1337). I do not know when our allowance became effective. Intermediate reclaim is included in the figures on Exhibit 106. We were allowed one day on a car handled in intermediate service in line haul traffic. It is included in the figures going to make up the result (Tr. 1339). If the Birmingham Southern basis was abolished in Chicago, the per diem and reclaim plan would be the most practical (Tr. 1340), provided proper allowance was made to cover interterminal traffic as well as the other classes. I see no objection to having the per diem plan with an increased divisions on terminal business sufficient to cover the detention. I do not think that a division could be arrived at which could stand over a period of time without the necessity of making a check every year or so (Tr. 1342). If the Birmingham Southern Rules are abolished and no reclaim is allowed

on interterminal switching, we want a division equal to that as between the Trunk lines and the Belt lines on two line traffic. We want a fifty-fifty split and will pay straight per diem. This would put us on the same basis with the other carriers (Tr. 1343). Our competitive railroads in Chicago receive $12 a car on terminal switching business, where a trunk line handles the business in line haul. Our revenue is $6.40 on the same car, just the same as we get on the interterminal. Our cost of administering the Birmingham Southern Rules is approximately the same as the cost of handling per diem and reclaim with a slight variation for stationery and so forth (Tr. 1344). If we were given a switching rate which would make us whole on our per diem detention, on a basis of 2½ days detention, and if the conditions would cause our detention to increase to five days, we would want our switching rate increased (Tr. [fol. 265] 1345). Reclaim is now supposed to make the switching road whole and is not supposed to show a profit or loss to it. The same result would have to be produced if an increase in rate is substituted for reclaim. If the four industrial roads in Chicago got no reclaim but received their car hire in the division itself, I think it would complicate the accounting (Tr. 1346).

A. P. CLAPP was called as a witness and, being duly sworn, testified as follows:

I am Chief Clerk to the Vice President and General Manager of the Illinois Northern, and have been with the road for 15 years (Tr. 1347). Prior to July 1, 1902, charges for car hire were on a mileage basis and no mileage was paid by switching lines. The Illinois Northern first settled under per diem in 1906 when reclaim on inbound interterminal traffic was in effect. There was collected from the shipper on interterminal traffic an amount equal to five days per diem to protect the initial carrier (Tr. 1348) against reclaims from the delivering carriers, the originating carrier under the per diem and reclaim rules taking the position of a line haul carrier. From 1911 to 1915 this charge was collected from shippers on business moving on a com-

bination of local rates. Under traffic covered by the Lowrey tariffs no charge was made to cover per diem but the reclaim on inbound interterminal traffic continued. The Illinois Northern received a five day reclaim until 1915 and on outbound interterminal traffic paid the reclaim. I have prepared a statement showing the additional allowance made to the Illinois Northern on interterminal traffic (Tr. 1349).

(Said document received in evidence as Exhibit No. 112.)

This exhibit shows the interterminal rates effective in Chicago from 1911 to date; it shows also the arbitrary allowance of the rate accorded to the Illinois Northern on [fol. 266] traffic in which it participated, and likewise the division of rates as between the using lines where no industrial road was a party to the movement. From 1911 to 1921 on two line interterminal traffic the originating line received two-thirds and the delivering line one-third. On three line traffic the originating line received 50% and the other two lines 25% (Tr. 1350). The larger division of the originating line enabled it to pay the five day reclaim. The Illinois Northern, however, had an arbitrary division much less than the division to the originating line and an additional allowance was made to it equal to the reclaim on the delivering line (Tr. 1351). This allowance was cancelled in 1915, the tariff providing "canceled as per diem allowance will be taken care of by the operating department of carriers". On Exhibit 112, item 13-F the $2.25 was the only amount that per diem was involved in, and it was uniform in the district (Tr. 1352). Reclaims on interterminal traffic in the Chicago district were abolished in January 1916, but the Illinois Northern did not get higher divisions to cover this addition cost of per diem on cars in such traffic. Its divisions remained the same. We tried to get a readjustment but were unsuccessful. In May, 1921, divisions on interterminal traffic were readjusted by the issuing, each carrier getting 50% on two line traffic. On three line traffic the originating and delivering carrier received 37½% and the intermediate carrier 25% (Tr. 1353). This adjustment was not accorded to the Illinois Northern and the other industrial roads. As a result of the former hearing in the Chicago car hire case in 1922, the Commis-

sion in effect restored the reclaim by giving free time on interterminal cars. Our $6.40 allowance became effective July 1, 1924 after a cost study made by a committee to determine our cost of operations under their formula. The allowance does not include anything for car hire (Tr. 1354). [fol. 267] The Illinois Northern receives that amount as a division on terminal and interterminal traffic. Our local rate is 1.5¢ per hundred pounds (Tr. 1355).

Cross-examination:

The roads which I said received divisions are not the so-called industrial lines. The Illinois Northern does not participate in them. The carriers termed issuing carriers in the Lowrey tariff get the divisions. Our allowance of the rate is named in dollars and cents in Exhibit 112. The note "F" that the allowances are divisions only and have nothing to do with per diem (Tr. 1356) was carried in the tariffs from August, 1911 (Tr. 1357). I see no disagreement between Note F and Item 13-F in Exhibit 112 because they applied to different classes of carriers. Note F puts a name upon the allowance that we would receive, to the extent that it specifically says that they have nothing to do with per diem, but there is an exception in the division sheets. There is no disagreement between Note F and Item 15-F, taking the construction of the Lowrey tariff into consideration. The carriers are subdivided into two classes, in the rate basis itself. Across the top of the table are named lines shown as issuing carriers referred to in that Note F, apparently. None of the short lines appear in that part of the rate table. Along the side of the table are named terminal lines. The short lines are included in that table in addition to all of the issuing lines (Tr. 1358). The study to which I referred was made under the direction of the Chicago Switching Committee to determine the cost of operation on our line. Their formula did not take per diem cost into consideration (Tr. 1359). As intermediate carrier on a three line haul, we now receive $3.60 on a loaded car and $1.80 on an empty car. The total tariff charge on these interterminal switching movements would depend upon the loading (Tr. 1365). The minimum [fol. 268] for a three line haul at the present time is $18

and $15 for a two-line haul. Our $3.60 is about 20% of that regardless of weight. If some road other than an industrial railroad handled the car it would receive 25% for similar service (Tr. 1366). The committee I referred to made a similar check on one or two other industrial lines but not on the line haul carriers. The committee was appointed to deal with the industrial railroads' allowances. I know of no railroad in Chicago which does terminal switching on a division of the rate instead of on a switching rate. I do not believe there is any such division in the district (Tr. 1367). These are called divisions in the rate, but they are all in the form of switching service charges or allowances (Tr. 1368). I do not know of any service performed within the switching limits of Chicago—that is, the handling of traffic which some railroad handles in line haul service outside—on which the handling road in Chicago receives a division of the freight rate, on which I assume it would not be entitled to any reclaim. I do not think the Baltimore & Ohio C. T. has any such situation in this district (Tr. 1369). The 3¢ charge per 100 pounds on interterminal traffic applies on a three line haul and will produce $18 on a minimum car. As a terminal line we would get $6.40 of that. The intermediate line would get 1¢ per hundred pounds or $6, and the third line would get the balance or $5.60 (Tr. 1371). There is no reclaim on that traffic. We would get more than anybody else and are the only road which would not have to pay per diem on a minimum car.

J. T. Morrison, having been previously called as a witness, was recalled and testified:

The figures covering cost of policing demurrage, contained in Exhibit 78, cover our entire demurrage clerk's wages, cost of checking cars and reporting them (Tr. 1372). Every car placed at an industry must be watched and checked every morning and it is possible that we would not have collected any demurrage during these years, yet [fol. 269] we would have had to go to the expense just the same. We handle repair cars under Master Car Builders Rules and are a subscriber to the Freight Car In-

terchange Agreement (Tr. 1373). Exhibit 76 shows that in 1924 60% of demurrage collected was paid by the proprietary industry, while 56% of the loads were handled by that industry. Exhibit 83 indicates that on the average basis its detention was less than that of other industries (Tr. 1374). That might be due to the fact that this exhibit is for four months and the other for one year, and it is possible that it might be due to $5 cars. If the Commission should abolish the Birmingham Southern basis at Chicago with reference to terminal switching, I would prefer to have a division of the rate which would enable me to pay per diem without reclaim; thus saving the expense of making reclaims. I think that would be more economical. I do not think it would be difficult to arrive at a figure which would be proper and reasonable to include in the divisions to cover the per diem cost (Tr. 1375), nor do I think it would be necessary to change that figure or to make a check every year. Under per diem and reclaim, we are supposed to have an annual check, and if per diem was included in a division, I think a yearly check would be insisted upon. If my operating expense were running more in one year than another, I am sure I would want a check (Tr. 1376). Many of our other costs fluctuate from time to time but they do not cause a change in divisions.

E. F. GAYLORD, having been previously called as a witness, was recalled and testified (Tr. 1377):

Days on which demurrage accrues on cars are included in making reclaim checks, because it was found that under the Average Demurrage Agreement a car could be held by a switching road for eight days without accruing a debit if it had two days' free time (Tr. 1378). That makes six days without demurrage accruing with two days for han- [fol. 270] dling back and forth, which makes eight days while the car is in the possession of the switching line without the switching line being able to collect demurrage under the Average Agreement. Most industries are under the Average Agreement. The Association, therefore, adopted the formula that cars should be counted up to eight days, and that detention beyond should be excluded on the theory

that if the car earned demurrage for the switching line it would be the switching line's responsibility for further delay. The figure is 10 days in Chicago because it is a very congested district (Tr. 1379). There we have so much delay that we felt some longer time should be allowed (Tr. 1380). From my standpoint it is not entirely defensible to allow two days' free time to a shipper for loading and unloading and not allow it to a terminal railroad, but the road to which the car is delivered does not assume all if its obligations if it receives free time (Tr. 1382).

C. W. CRAWFORD, having been previously called as a witness, was recalled and testified:

I have no actual figures as to the cost of checking the records of the industrial railroads in Chicago for reclaim (Tr. 1386). In making these checks, the American Railway Association borrows a representative from each road that is to be checked and assigns the work to them. We pay their salaries and expenses and pro-rate it among the roads concerned. I do not know what additional expense there is. I have a statement which shows most of the checks that we have made since January 1925. The expense has run from 1.04¢ per car in the case of the Lake Terminal to as high as 14.74¢ per car at Muncie, Indiana. That high cost is due to the fact that only 2886 cars were checked. Most of these are checks made of all the roads at the terminal and I do not have here any industrial roads except the Lake Terminal but their records are all on the same basis [fol. 271] (Tr. 1387). We have a figure of 3.71¢ covering a check of all the roads at Detroit that perform switching service in the Detroit Terminal. This expense is generally assumed by the trunk lines. When we check an industrial switching road to fix its reclaim, its only expense is to furnish us a man to go over its own records. The other expense is all assumed by the trunk lines (Tr. 1388). All the checking is done by men borrowed from the trunk lines with a short line man to assist. All he does is to show us where

his records are and explain them. I will be glad to file this statement (Tr. 1389).

(Said document received in evidence as Exhibit No. 113.)

Under arbitration Case No. 173 it appears that at Chicago Heights there is a two line haul on a minimum charge of $15 out of which the B. & O. C. T. absorbs a $6 switching rate and pays a reclaim of $2.94 (Tr. 1390), leaving it with $6.06 per car. It would pay its own per diem out of that $6.06 (Tr. 1391).

Mr. Rice: I simply wanted to make certain that no matter how short the line haul is the switching road can ask for its reclaim under the reclaim rules.

The Witness: The Chicago Heights case is a very extraordinary situation. I don't know of any other situation in the United States like it (Tr. 1392). Since the decision was made, the matter is being straightened out (Tr. 1393).

Mr. Rice: At Washington, Mr. Crawford, you introduced some exhibits which showed a number of short lines to which free time allowances are made, and some others which applied to short lines which are on the demurrage basis. Now, we cannot tell from looking at those whether they are switching roads, or whether they are Class 2 roads, or whether they are Class 3 roads, and I wanted to ask if you gentlemen would be willing to stipulate in the record [fol. 272] that the Commission might examine the annual reports of those roads or the annual published statistics, which are published by the Commission, to ascertain the mileage which they operate, and the class of road, whether it is a switching road or a Class 2 road or a Class 3 road, in order that we may have some general idea of what kind of a road it is. That applies to both the steam roads and the electric lines.

I will tell you what I have in mind: In glancing over the record, I have run across one road out here in Ohio, which is shown as a plant facility. It is the Northern Ohio Power and Light Company, but I see from its annual report that it apparently operates about 199 miles of road, has a freight revenue of over half a million dollars, and does a passenger business of almost five million dollars in a year. Now, it may be a plant facility, but the amount

of revenue which it receives would seem to indicate that possibly it may handle some traffic for somebody else. In any case, we would like to be able to look up the mileage of these roads (Tr. 1394).

Mr. Rice: I want three items. I do not know whether I mentioned freight cars and locomotives before, or not, but we would like that also. We want freight cars and locomotives, mileage operated, and the class or road; if the annual report shows that it is an industrial road or is the subsidiary of an industry, we would like to be able to look at that also.

Mr. Towner: That is perfectly agreeable.

Mr. Burchmore: Right on that point, if your Honor please, I must say that the annual reports are more or less misleading, because you will find that in three-fourths of the annual reports of the companies, held by the Commission to be industrial common carrier railroads, they do not on their face—that is, the reports do not on their face—show them to be such. I just offer that as a suggestion.

[fol. 273] Mr. Rice: Then we will withdraw the request for information with reference to what they are subsidiaries of. We will not ask for that. Mr. Towner, we also would like to be able to take from the Commission's published reports the mileage operated by Class 1 roads, just for 1925 or 1926, whichever is the latest annual report that is issued.

Mr. Towner: I will be glad to stipulate that also.

Mr. Rice: Will you stipulate the same thing with reference to the Pennsylvania Railroad System?

Mr. Towner: Yes, sir (Tr. 1397).

Mr. Burchmore: I do not want the record to indicate that I am stipulating anything, because I am not.

The Witness: I think the reports have established local switching reclaim rules at a number of important terminal points, such as St. Louis, Buffalo, Toledo and perhaps Detroit (Tr. 1398).

Mr. Rice: Would you be willing to stipulate that we could look in the Commission's annual report and see what average haul each Class 1 railroad receives?

Mr. Towner: Average haul figures are rather likely to be misleading, but so far as the stipulation is concerned I am agreeable (Tr. 1399).

The Witness: The theory of reclaim is that the switching line should be made whole on per diem paid on cars switched for a road haul carrier. We cannot successfully draw the line anywhere else. We cannot provide a per diem and reclaim arrangement on length of haul. Reclaim is not based on the theory that the long haul received by the trunk line will average up and offset the small revenue on the short line. Reclaim is allowed on purely terminal service on the theory that the switching road is acting as agent for the trunk line in making delivery on a shipment in terminal service, although that is not entirely the reason [fol. 274] since reclaim is allowed whether the switching charge is absorbed or not. Where they merely perform a switching service they are really acting as agent for the line haul carrier in making delivery (Tr. 1400). The switching road has a right to reclaim per diem. I think that when I put in the Arbitration Cases I can show you some decisions to that effect (Tr. 1401). The reclaim rules have nothing to do with the demurrage an industrial road collects. If there was a criticism under the per diem rules because the effect seemed to be that a proprietary could pay demurrage through its industrial road into its own treasury and that after the expiration of the free time the industry would be virtually on a straight per diem basis, whereas, other industries next door or on the same road would be obliged to pay the progressive demurrage rate of $2. or 5, or whatever it happened to be, I think that there can be more criticism under the Birmingham Southern Rules. I think there is a greater preference (Tr. 1402). I have already enumerated all the changes that were made in the per diem rules since the Birmingham Southern Rules have been effective and which eliminate every possibility of preference. The checks now provided on the basis of which the reclaims are computed do not, however, take care of the demurrage collected from controlling industries and industrial roads (Tr. 1403). The matter of collection of demurrage by short lines has never been in the control of the trunk lines (Tr. 1404).

Mr. Browder: I will agree that the detention figures of the Illinois Northern are correctly shown on page 2, Section B, Columns 1 and 4 of Exhibit 67. We are not stipulating anything about the reclaim which we would have in fact received had we been operating (Tr. 1405).

Director Bartel: This hearing is adjourned to September 7, 1927, at the United States Court Rooms, Boston, Mass. [fol. 275] Examiner Rice: The Commission has set for further hearing at this time and place Docket 17801, rules governing car hire settlement between railroads and various cases consolidated therewith.

WALTER YOUNG was called as a witness and, being duly sworn, testified as follows (Tr. 1417):

I am General Traffic Manager of the Atlas Portland Cement Company which controls the Northampton & Bath Railroad. The railroad was built in 1902 (Tr. 1418). I also have charge of the traffic affairs of the Northampton & Bath, although I am not an officer of the Company. The statement which was marked as Exhibit No. 17 for identification, at page 435 of the record, was prepared by me and submitted to the President of the Central Railroad of New Jersey. (Tr. 1419), the President of the Lehigh & New England and the Vice President of the Lackawanna Railroad in February, 1927. They all signed the agreement. It was first signed by the President of the L. & N. E. (Tr. 1420). It was next signed by the Lackawanna and next by the Central of New Jersey. I then had it executed by the President of the Northampton & Bath.

(Said document received in evidence as Exhibit No. 17.) (Tr. 1421.)

I am familiar with the agreements which are attached to Exhibit 17 (Tr. 1422). In the Northampton & Bath Railroad case, 41 I.C.C. 68, the Commission said that the Northampton & Bath should publish rules providing for the assessment of demurrage against shippers after the expiration of 48 hours of free time, while the Central should publish demurrage rules providing for the assessment of demurrage against the Northampton & Bath after 48 hours free time; the Central to refund to the Northampton & Bath $1.00 out of the demurrage received from the Northampton & Bath; the Lehigh and the Lackawanna to publish similar rules. The result being that all shippers located on the Northampton & Bath will be accorded exactly the same treatment in the matter of demurage as shippers located

[fol. 276] on the trunk line and the Northampton & Bath will receive one day's free time, in addition to the two days' free time which the shippers will be allowed. After the decision of the Commission at 41 I.C.C. 68, I prepared this agreement and first submitted it to the Central Railroad of New Jersey (Tr. 1423). I was told by its lawyer that the agreement accomplished the result the Commission had in mind. We submitted it informally to the Commission and we were informed that it was satisfied with the agreement. The agreements became effective in November 1917, and March 1920, and are still in effect (Tr. 1424). There has been no modification of them since then. So far as I know they have been satisfactory. I have felt that the Commission itself considered the agreement satisfactory (Tr. 1425). The Commission's report did not require us to pay our connections the demurrage we collected from shippers and consignees, but it seemed to me that it was implied in order to prevent the controlling industry from obtaining advantage by way of demurrage charges by reason of its control of the railroad. The railroad has always assessed demurrage charges against the Atlas Portland Cement Company, which charges are paid to the connections (Tr. 1426). Similar charges are collected from other shippers and paid over to the connecting lines.

Cross-examination:

I control the traffic of the Atlas Portland Cement Company, and the three roads which signed this agreement are the only three roads connecting with the Northampton & Bath. The Northampton & Bath receives all the traffic of the Cement Company (Tr. 1427). Our connections contested the case reported at Volume 41 of the Commission's reports. I won't say that they contested it in the sense that you imply, but they were respondents in the case. They participated in the proceedings. I do not recall that they maintained in that case that the per diem rules should apply. I think their views have changed since then; the [fol. 277] frequent statements which their various officers have made to me in the last 10 or 12 years that the agreement has been in effect, indicates complete satisfaction with it. My principal dealings with the railroads are with the traffic officers (Tr. 1428).

Examiner Rice, in response to a question of Counsel whether the answer filed by the Northampton & Bath to the questionnaire issued by the Commission is part of the record, stated that it was.

The Witness: I have read several times that answer to the questionnaire. Respecting the statement on page 2 of the return that the Northampton & Bath is a party to joint rates on approximately 80 per cent of the tonnage, and that in the absence of through rates absorption tariffs of the connecting lines take care of Northampton & Bath charges, I may say that since it was filed the situation has changed so that now almost all of our traffic is handled under through rates (Tr. 1429). Up to two or three months ago, there was an absorption under a switching absorption tariff of our charge by the trunk line carriers which extended the junction point rate to the Cement plant. In those instances, I would hesitate to say that our charge was a switching charge. It should not be possible for connecting lines to absorb a local rate (Tr. 1430).

Mr. McCarty: Originally most of the inbound traffic of the Northampton & Bath was handled through the absorption of the Northampton & Bath charges which were published as switching charges, although there were through rates on outbound cement. The traffic Bureau of the Commission raised the question of the right of the trunk lines to absorb these charges inasmuch as in subsequent publications these rates began to be published as in the case of line haul rate (Tr. 1431). We explained the whole situation and lately we have practically eliminated all absorptions (Tr. 1432).

The Witness: The Northampton & Bath is now considered a connecting common carrier of the through lines with [fol. 278] which it connects to the extent at least that it gets a division of the through rate in practically all instances. We have always contended that we were an industrial common carrier and contended before the Commission that we should be treated as such. I do not think that under our present car hire arrangement when the connecting carriers deliver traffic to any industry on the Northampton & Bath, the Northampton & Bath is considered as a plant facility of the industry to which the traffic happens to be destined.

(Tr. 1433). I do not think that results from the fact that all the demurrage we collect is turned over to the connecting line, although we do do this. It does not follow from that that the Northampton & Bath Railroad becomes a plant facility. It is the only method I could conceive that would effectuate the views that the Commission expressed in the Northampton & Bath case (Tr. 1434). I will go so far as to concede that the Northampton & Bath is a plant facility; I will go this far, by stating it has some of the characteristics of a plant facility but is a common carrier and entitled to divisions of through rates. The Northampton & Bath now receives a division of 17¢ from the Lackawanna and L. & N. E. (Tr. 1435) and 10¢ from the Central of New Jersey. They have been in effect for four or five years. The arrangement so far as car hire is concerned provides for an additional day free (Tr. 1436). The Northampton & Bath does not pay demurrage for the use of the cars, but demurrage paid by the industries to the trunk lines and demurrage paid by the Northampton & Bath are computed on the same basis (Tr. 1437). The shipper pays demurrage, but we have always referred to the Northampton & Bath payment as a detention charge. Both are computed in the same way and to that extent the railroad is in the same position as a shipper or consignee. I would not concede that to that extent it is a part of the consignee's or shipper's facilities. The Northampton & Bath pays the de- [fol. 279] murrage rate for which it is responsible computed under the Demurrage Rules (Tr. 1438). I do not mean to say that prior to the time this arrangement was put in the Cement Company was being unlawfully favored, but the arrangement that we made, in my view, carried out the purpose of the Commission which was to obviate the possibility of any preference as a result of the rather loose way in which the car hire situation was handled. If the per diem rules of the American Railway Association were put in effect on the Northampton & Bath and if under that plan it were possible. If the Northampton & Bath retained demurrage collected from the Cement Company, I think it would create the possibility of undue preference; it might be considered almost equivalent to its retention by the controlling industry. I do not think that is due to the fact that the railroad has been set up as a common carrier (Tr. 1440). The possibility of preference is due to the fact that

the Northampton & Bath is interposed between the Cement Company and the trunk lines; the same thing is true as to any other common carrier controlled by an industry. I would not say that if per diem rules of the Association were put into effect on the Northampton & Bath that that fact alone would enable the Northampton & Bath and the Atlas Cement Company and connecting lines to get together and arrange for a preference to the owning industry. I will say this: I do not understand that the plan you have in contemplation is materially different from the plan which was in operation before the Commission's decision. I support the present plan because the Commission approved it and because it seemed to me eminently fair (Tr. 1441). As I said, I think that if under the plan you have in contemplation, it were possible for the railroad to receive and retain demurrage charges from the owning industry for such detention as the industry was responsible for, it is equivalent to transferring the money from one pocket to the other (Tr. 1442). I would say that the right of the Central of New Jersey to receive payment for one of its [fol. 280] cars used by the Northampton & Bath would depend largely on what the general practice was under similar conditions. I do not mean that the trunk line should be required to turn its car over for use by somebody else without getting anything for it (Tr. 1443), but if the Northampton & Bath was a switching road and getting a switching allowance, the trunk line would not make a charge for the use of the car, as I understand it. We do not regard the Northampton & Bath as a switching line. If the Northampton & Bath, considered as a switching road, should not pay the Central Railroad or its connections for the use of a car while it was on its line, the mere fact that that business is handled as road haul traffic would not make it proper to pay for the use of the car while it was on its line (Tr. 1444). While the service of the Northampton & Bath is road haul service, its characteristics are similar to switching service. If it is not proper to impose a charge for detention in switching service, I think it is equally not proper to waive the charge if handled in road haul service. It is possible the railroad handles some local traffic from one point to another on its rails (Tr. 1445). The report of the Commission at 41 I.C.C. 68 did not require the Northampton & Bath to pay to the trunk lines demurrage col-

lected by it. We decided to do that because we thought it was implied under the Commission's order. The purpose was so that nobody by any possibility could claim that we were making a profit out of other people's cars (Tr. 1448). I am generally familiar with the Birmingham Southern basis. Under that plan the industrial line retains demurrage which it collects: We turn it over to the trunk lines because we think it is proper to do so under the circumstances (Tr. 1449). On loaded cars which we receive from connections, we receive three days' free time per load, including the free time allowed shipper, and if the car is loaded in and loaded out we are allowed six days. There is [fol. 281] very little of that traffic as most of our inbound traffic is in open cars and all of our outbound traffic is in box cars, so there are very few of the cars we receive loaded that we are able to load out (Tr. 1450).

GEORGE W. WIRTH was called as a witness and, being duly sworn, testified as follows:

I am Auditor of the Northampton & Bath Railroad, and have prepared a statement of amounts paid by it for car hire from 1920 to 1926, inclusive.

(Said document received in evidence as Exhibit No. 114.) (Tr. 1451.)

The amounts in the first column are the demurrage received from shippers and paid to connections and the demurrage in the second column is the detention over the free time that the railroad pays and chargeable against hire of freight cars (Tr. 1452). The $1443 demurrage paid in 1925, as shown on Exhibit 114, includes $1279 paid by the shippers. The amount paid by the Northampton & Bath itself was only $164 (Tr. 1453). We are under some expense in collecting demurrage, clerks, adjustments, etc.

A. F. TIDABOCK was called as a witness and, being duly sworn, testified as follows (Tr. 1454):

I am General Manager of the Northampton & Bath Railroad. There have been some changes in its situation since

the report of the Commission at 41 I.C.C. 68 (Tr. 1455). The allowances of the Northampton & Bath have been revised and are now 10¢ per ton on traffic to and from the Central of New Jersey and 17¢ per ton on traffic interchanged with the D. L. & W. and L. & N. E. Our average loading is approximately 40 tons a car. The Northampton & Bath does not now perform any intra-plant service for the Cement Company. The Cement Company performs this service itself (Tr. 1456). The railroad now owns and operates 5 locomotives and has constructed two tracks to serve a new industry, which will largely increase the amount of traffic of the road. The railroad has no local traffic, all [fol. 282] traffic being interchanged with its connections (Tr. 1457). Passenger service has now been discontinued. It is an associate member of the American Railway Association and a member of the American Short Line Railroad Association. From 1922 up to July 31, 1927 we interchanged 309,667 cars with connections (Tr. 1458). On them the average detention was 2.1 days, which includes detention paid for by shippers. It is the average time each car was on the line of the railroad (Tr. 1459). The average free time per car is somewhat less than 2.1 days (Tr. 1460). The figures cover loaded cars and show detention from the time the car was received from connecting lines until returned, and includes Sundays and holidays (Tr. 1461). On the outbound traffic we classify the cars in accordance with the desires of the connections, which requires us to perform switching service in making that classification (Tr. 1462). We could deliver the loads in any order we pleased as there is no rule obligating us to make that classification. The time occupied in classification is included in the detention figures, which would be decreased an hour or so on each car if we did not do it (Tr. 1463). To the Central of New Jersey our haul is approximately one mile and to the other connection is approximately 8 miles from or to the Atlas Portland Cement Company. The service to the Central of New Jersey is analogous to switching service, and the service to the other junction is road haul but similar to switching service. Our crews are paid on a switching basis and our trains are not scheduled (Tr. 1464). They are run as extra trains. Three of our engines are road style and the others are switch engines, used indiscriminately in this service. In the figures I gave, a car which

goes in and comes out loaded we have counted as two cars (Tr. 1465). So far as interchange is concerned, in the detention average we have counted it as one car. If we counted it as two cars, it would reduce the average detention figures but in assessing demurrage against the shipper, [fol. 283] we counted it as two cars. That is because they are entitled to two days to load and two to unload. There is some difference between the Birmingham Southern basis and the Northampton & Bath plan. Under our plan credits earned on cars held for loading cannot be used to offset debits accruing on cars held for unloading, whereas this is done under the Birmingham Southern basis. We get only one day free and ours is not an average agreement all the way through. If the Northampton & Bath which is entitled to one day's free time under this plan, delivers the car back the same day it receives it, it does not get credit for a day against other debits. It is not an average agreement at all as far as the Northampton & Bath is concerned (Tr. 1467). We have the average agreement with the Atlas Portland Cement Company. The other shippers are entitled to such agreement if they want it. Under the Birmingham Southern basis there is averaging but there is no requirement that the short line pay to connections the demurrage collected from shippers (Tr. 1468).

Cross-examination:

The detention figures I gave are computed on the Per Diem Rules basis, the time is figured from midnight to midnight and Sundays and holidays are not excluded. In computing demurrage against shippers we eliminate Sundays and holidays, but they are not eliminated in computing our railroad detention (Tr. 1469). Under per diem we would pay $1 a day for a car even though the industry was not paying demurrage during that day which might be Sunday (Tr. 1470). In the figures I gave, the free time allowed shippers is excluded, but they are included in the average detention. The average detention, regardless of whether Sundays or holidays are included is 2.1 days (Tr. 1471). Under our basis we get a total of three days free, two days for the shipper and one day for the railroad. Notwithstanding our average [fol. 284] detention of less than three days, demurrage accrues because after four debits accrue an industry pays

demurrage at $5. per day (Tr. 1472). The charges against the industries in 1925, as shown by Exhibit 114, were what we might call penalty charges, which accrued in the period beyond the credit period. During this time our industry was treated exactly the same as if it were on our connecting trunk lines (Tr. 1473). We classify cars for our trunk lines to expedite the movement. It is just an operating convenience for the trunk line. The expedition made no difference to the shipper. The trunk line will do this work if we want them to (Tr. 1474). The traffic that we classify is about 30 cars per day. My figures mean that the Northampton & Bath is allowed three days free time but is using only about two days. If we had a two-day rule, we would lose every time a car ran over two days, and would not get any off-setting credit when it ran under, so the result is that we would not come out on a two day basis but would come out higher. This is not an average agreement between the Northampton & Bath and its connections (Tr. 1475). We cannot use a credit earned against the Central of New Jersey to offset a debit on the Lackawanna (Tr. 1476). In 1925 and 1926, 97% of our traffic moved on a line haul charge and on only 3% was our charge absorbed on the basis of switching (Tr. 1478). Our charge could be called a switching charge or a line haul charge. It is a flat rate per ton. All our rates are published in cents per ton. On 97% of our traffic interchanged with our connections in 1925 and 1926 we received a division of a through rate (Tr. 1479). It will all be on that basis shortly. We probably handled no traffic on the absorbed charge during the four months of 1925 covered by the answer to the questionnaire (Tr. 1480). I am familiar with the negotiations regarding our divisions with connecting lines. In these negotiations divisions or any allowances or any other consideration has been given in fixing the divisions or allowances accruing to [fol. 285] the Northampton & Bath for car hire.

Mr. Towner: I object to that just as I have consistently objected. It is clearly outside of the scope of the case (Tr. 1485).

The Witness: Our costs were computed on the basis of a formula prescribed by the Commission and our allowances were fixed by our connections on that basis; so everybody knew what was in everybody's mind (Tr. 1486).

Examiner Rice: The American Railway Association rules themselves inject the division feature into it in a measure because they say that if a road gets a division—a switching road—it is not entitled to reclaim.

Mr. Towner: That is merely a standard of measurement. I know nothing about the divisional arrangements between the Northampton & Bath and its connecting lines. We are not investigating that (Tr. 1488).

The Witness: If the Commission abolished our present method of car hire settlement, we would want either per diem reclaim or an adjustment in divisions. We would want our divisions adjusted to take care of the additional cost under straight per diem (Tr. 1489). We do not want to pay any more for our cars than a switching line which is entitled to reclaim. We have no defined switching district. We make light repairs to foreign cars in bad order on our line as part of our own expense. Prior to the establishment of the present basis, we paid per diem with two days' reclaim on foreign equipment, lines beyond our direct connections, and five days' reclaim on connecting line equipment (Tr. 1490). We would get two days free on a Pennsylvania car and five days free on a Central of New Jersey car. The traffic was handled on the same basis of charges as now (Tr. 1491). I think the $164 paid to trunk lines in 1925 was for detention by the railroad itself.

[fol. 286] Mr. McCarty: I asked the witness about this question of divisions and you objected to it. I don't know just how the record stands.

Mr. Towner: Since it appears that the witness answered the question, I would like to add to my objection a motion to strike his answer out of the record as I do not think it has anything to do with the issue we are debating.

Examiner Rice: We had a long discussion at Chicago as to whether we should talk about car hire cost not being included in the local charges of the industrial railroads, and held that it was a very pertinent question. I think it is all right to ask that question (Tr. 1492).

The Witness: The Commission prescribed a formula upon which our divisions should be computed and we did not include car hire. Our divisions were last fixed in 1922 and were computed on the basis of the formula. I know that

car hire was excluded from our expenses in computing our cost of service (Tr. 1493). That was my authority for the statement that car hire was given no consideration in fixing of divisions by representatives of the trunk lines. We did not include any car hire cost in the figures we used as a basis for the divisions (Tr. 1494).

JOSEPH A. MONAHAN was called as a witness and, being duly sworn, testified as follows:

I am Secretary and Assistant Treasurer of the Narragansett Pier Railroad, which is 8.03 miles long, running from Narragansett Pier, Rhode Island, to Kingston, Rhode Island, where it connects with the New York, New Haven & Hartford Railroad its only railroad connection (Tr. 1495). The road has been in existence since 1876. In 1926 our gross revenue was $102,403.23, of which $52,050.72 came from freight and $38,870.18 came from passenger, $7,046.73 from express and $1,079.38 from mail. Practically all of our freight revenue accrued from interline traffic, as we have no local business (Tr. 1496). In 1926, 97% of our [fol. 287] gross tonnage of 48,019 tons was inbound. We serve a mill at Peace Dale, Rhode Island, employing about 800 people; most of its finished products go by express (Tr. 1497). Another Company at Wakefield employs about 85 people; most of its finished product goes by parcel post. We do not subscribe to the American Railway Association per diem basis and are now paying the New Haven $1 a day for each foreign car; we are allowed no free time. I have prepared an exhibit showing the percentage of our car hire cost to our percentage of the joint revenue on interline business. We pay 24.41% of the joint per diem and get 18.19 of the joint earnings (Tr. 1498). 30% of the cars used were New Haven cars and 70% cars of other lines.

(Said document received in evidence as Exhibit No. 115.) (Tr. 1499.)

Mr. Hitt: We offer as Exhibit No. 116 the answer of this railroad to the questionnaire.

(Said document received in evidence as Exhibit No. 116.)

We have no local traffic. It would not be practical for us to own cars in interline service as 97% of our traffic is in-

bound, and we do not originate any carload traffic at all, and these cars go out empty almost entirely. If we owned cars they would be on our tracks most of the time, because we have no carload freight we could use to send them out to earn per diem (Tr. 1500). Since our cars would earn practically nothing, it would be foolish to spend money for them. So far as I know, we have always paid whatever car hire charges were demanded by the New Haven. The first record of payment I was able to find was 1899, when we commenced to pay mileage. We began paying per diem at the rate of 20 cents per day in July 1902 (Tr. 1501). When the per diem rate was gradually increased from 20¢ to $1 our divisions were not increased so far as I know. I do not know that care hire expense was ever considered in fixing our divisions. The Commission has fixed our final valua-
[fol. 288] tion at $310,000 as of June 30, 1916. Since then we have spent about $75,000 in additions and betterments (Tr. 1502). In the last seven years we have had a deficit in four years. The average deficit for seven years was $2,388.96. We got no part of the 15% increase in divisions granted the New England carriers. If we had large enough divisions to take care of our expenses, and a fair return on the value of our property it would not make any difference to us how unfair or unreasonable the car hire or per diem basis would be, but I understand this proceeding is confined to a consideration of the merits of per diem alone. What I have said about divisions is simply to show that the disproportionate burden put on us under the present per diem system is not offset in any way (Tr. 1503). We are not satisfied with our present basis of car hire because we feel we should have two days or more free time since we are a terminal road with small revenues and high costs. We have to allow shippers two days free time before we collect demurrage. In addition, we have the average agreement with our consignees and so receive very little demurrage. We operate one train a day in each direction and experience a great deal of difficulty at Kingston in interchanging cars (Tr. 1504). Instead of the New Haven placing cars for our line on our interchange track we have to go into the New Haven yards and get our cars out of long trains, and in addition, in order to do so, we frequently have to spot their own cars at their freight house. We receive no compensation for this additional work which we should not be forced

to do. I think the New Haven could well afford to charge us no per diem, for if they operated our little road as a branch of their own line they would have to stand all the car hire (Tr. 1505). In principle there should be a limit on the free time and there should be some premium upon the prompt return of cars. I think the Birmingham Southern [fol. 289]. basis would be a good one for us which would allow us three days' free time, so we can allow our consignees the usual 48 hours to unload and have one day margin. All our traffic is line haul traffic. We have no local traffic and no switching (Tr. 1506). We handle all traffic on divisions of through rates, except that there are a few shipments on which we get a local rate. That situation has obtained at least since 1920 (Tr. 1507). The betterment in our financial condition lately is due to our operation of a bus line. Car hire is not entirely responsible for our poor financial condition. It is just a disproportionate expense of operation which we would like to reduce. It is higher in proportion to the revenue (Tr. 1508). Exhibit 115 shows that our per diem expense equals 10% of our gross revenue and the expense of per diem to foreign lines is about 7% of their revenue (Tr. 1509). The figure of 10% is somewhat higher than the figures for other years. We used February, which is a short month, and that may account to some extent for the 10.44 per cent. In ascertaining per diem on foreign lines we assumed that two days had been granted for shipping or loading. We started the period two days prior to the date of the waybill, and then took it right up to the date of the shipment, the final release was turned back to the New Haven, giving a spread of so many days. Out of that we have to pay so many days and the foreign lines pay the balance (Tr. 1510). I don't know how much per diem the foreign line actually paid, unless they are not following the rule. If it had to haul a car a considerable distance for loading, it might pay more per diem and increase the foreign line expense. Their per diem might have been more than 7% or less than 7% of their revenue. To make up this exhibit we had to use some basis (Tr. 1511). In some cases where we allowed two days their per diem was less than two days but in other cases where we allowed two days they might have paid per diem six, eight

or ten days. If six or eight days were allowed, they would collect demurrage. I did not take into account demurrage [fol. 290] collections either on our railroads or on connections (Tr. 1512). If we had more money we would not have to worry so about car hire. It would not be practical to increase our local rates as we have no local business—two cars a month (Tr. 1513). I said I thought the Birmingham Southern basis would be a much better basis than we have. We would not pay so much per diem. The New Haven does not place cars on our interchange track (Tr. 1514). I do not know how many cars the New Haven brings into Kingston on an average day. We take about 12 a day from the New Haven. We cross the main line of the New Haven to get the cars and the freight tracks of the New Haven are in some cases a half mile or a mile away. We have to go down those tracks (Tr. 1515). I do not think the New Haven loads the empties that come outbound from our line, and do not know whether it has any use for them on its railroad. I do not know whether the percentage of empty movement of cars off the New Haven is very large. Our railroad was not a party to the New England Divisions case (Tr. 1516). The New Haven was supposed to take care of us; they handle our traffic matters and things of that kind for us under a power of attorney. We did not even know the thing was going on. The New Haven never even asked us about including us in the New England Divisions case. The population of the territory we serve is about 5100. The country we operate in is rolling without bad grades (Tr. 1517). I will furnish our freight revenue and net railway operating income and demurrage collections for the years 1921 to 1926 inclusive. As to whether our situation would be taken care of satisfactorily by an increase in divisions, we do not object to where the money comes from, provided we get enough to pay our operating expense, a return on investment and car hire bills. (Tr. 1518).

[fol. 291] L. A. PUTNAM was called as a witness and, being duly sworn, testified as follows:

I am auditor of the White River Railroad and Springfield Terminal Railway (Tr. 1519). The White River Rail-

road is located in Vermont. It connects with the Central Vermont at Bethel and runs 20 miles up the White River Valley west to Rochester, a stub end. Operating conditions are difficult because of the narrow valley and heavy grades, and we operate only one train a day due to the low density of traffic. For this reason it is impossible to speed up the movement of cars to any extent. The railroad is a subscriber to the per diem agreement. We subscribed to get reclaim on cars switched at Bethel, to industries on our rails (Tr. 1520). Since these industries are defunct we should have withdrawn from the agreement as there was no longer any necessity for being a party to it, but the Central Vermont offered to report cars for us to car owners and allow us to report direct to it, so that it is immaterial now whether we belong or not. Practically all of our freight traffic is interline. 20% is inbound and consists largely of coal; 80% is outbound and consists of talc, lumber, marble, miscellaneous. Our gross revenue for 1925 was $59,847; for 1926, $56,179.82. Of those amounts $46,058 in 1925 and $41,216 in 1926 accrued from freight business. The amount $4,867.31 we reported as switching revenue is for work done in the Central Vermont yards at Bethel for that railroad, making up trains, weighing cars and switching for their account to local industries at Bethel. It is an operating agreement under which we are paid so much per mile per switching hour of six miles per hour. We receive no reclaim on this switching business as we do it for the Central Vermont. We pay no per diem on the cars used in it. Our present basis of car hire settlement on interline traffic with the Central Vermont is settlement direct with that road. The Central Vermont reports our per diem for us to car owners to relieve us of the clerical work. In 1925 our per diem account was $3,840 (Tr. 1523). [fol. 292] In 1926 it was $3,787. We publish the National Demurrage Tariff, and collected $321 demurrage in 1925 and $1,013 in 1926. Our average detention is between 3.5 and 3.6 days. About 10% of our gross interline freight revenue is per diem cost. On outbound traffic we get the empty cars from the Central Vermont at Bethel and bring them to various points on the line (Tr. 1524). We have no opportunity for setting these cars for shippers for loading before the next morning, as we operate but one train a day.

If the shipper takes his two days free time, four days elapse before the car is returned, making the minimum per diem charge $3 per car. The White River Railroad has been a subscriber to the A. R. A. Per Diem Code for at least 10 years. We are not exactly satisfied with that basis of car hire settlement (Tr. 1525). Our principal objection to the rules of the American Railway Association is that they are very arbitrary and that if an exception should be made in our case due to operating conditions or any other condition which might make it to the advantage of the Central Vermont to give us an allowance, it could not be made without violating the rules and we are hoping that conditions will improve so that we can make it to their advantage to give us an allowance and in that event we want to be able to treat with them and not be forced to abide by an arbitrary rule. (Tr. 1526). We think that as an originating road we ought to have a car hire basis which would leave us in the clear on all cars handled promptly. In saying this we do not complain against our car hire cost. We object to the inflexibility of the rules which do not allow deviation to fit particular conditions. Conditions are so varied and the number of cars handled so large on most class I roads, that averages and rules based on these averages are fair (Tr. 1527), but this is not true of a stub-end feeder or terminal carrier. We think each short line having only one connection should be free to negotiate with that connection as to car hire. I have prepared a statement summarizing statistics for inbound and outbound cars in [fol. 293] February 1927, which reflect approximately average results (Tr. 1528).

(Said document received in evidence as Exhibit No. 117.)

The Central Vermont evidently believed in our existence as a feeder because they gave us sufficient assistance to kep our railroad alive (Tr. 1529) and help us all they can with advice and cooperation. If there was any plan of operation which could be used which would save either one or both the Central Vermont and ourselves car hire, I am sure they would join us in putting such a plan into effect and would share the savings with us. But under present rules to which they must subscribe, the Central Vermont

could not make any exception in our case to the rates or rules for car hire, even though they know it to be justified. Our plea is that the Commission order per diem rule 6 be stricken from the Code of Per Diem Rules, and a new rule promulgated which will permit free negotiation between trunk line and short line connections, whether subscriber or non-subscriber, that will be flexible enough to cover the particular conditions. The Central Vermont is our only connection and we settle per diem in accordance with the per diem rules (Tr. 1530). I say that only 1% of our traffic is local because I checked the interchange settlement with the Central Vermont and our own waybills for a period of several months. We use foreign cars in that business (Tr. 1531). I think we should pay per diem on those cars and I distinguish between them and the traffic handled jointly with the Central Vermont. I did not say we ought not to pay car hire on cars handled jointly. I said we wanted a fair basis of car hire settlement that would leave us in the clear or a just and fair settlement. I do not know definitely just what would be fair (Tr. 1532). I want to be free to treat with the Central Vermont for a fair settlement. We consider our per diem a burden to us now because of low density of traffic and inherent condi- [fol. 294] tions on the railroad. Our net income is not high enough (Tr. 1533). We are not willing to get on the stand and say that we do not consider the amount we have to pay fair because there are alleviating conditions which are the direct result of Central Vermont's cooperation and aid. I think an originating carrier ought to have lesser car hire than an intermediate or delivering carrier because it does not have as much opportunity to make money (Tr. 1534). We would be satisfied to have the present conditions continue as between ourselves and the Central Vermont (Tr. 1535). We would be satisfied to continue regular per diem payments if we were free to change it if we though it was necessary. We do not now object to it. All the coal, or about 75% of our inbound tonnage, moves on joint through rates (Tr. 1536). The balance moves on combination rates. About 15% of our outbound traffic moves on joint rates, 60% on proportional rates, and the balance on arbitraries. In less than half the cases we receive a division of the through rate (Tr. 1537). On some traffic the total charge is

made up of our local rate and the charges of the Central Vermont. Our charge is added to the total. In no case are all of our charges absorbed (Tr. 1538). In the case of talc shipments the Central Vermont made an absorption of our charges. I suppose technically our service is a line haul service but it is analogous to switching service. All of it is handled under line haul rates. We have no cars of our own that are suitable to interchange. Our road participates in the National Demurrage Tariff and collects demurrage. Any plan we might have in mind would contemplate our retaining all demurrage; whether we would be willing to turn that over to the Central Vermont would depend on conditions (Tr. 1540). Our detention of 3½ days is due to the fact that we only operate one train a day. With additional service it would be cut substantially but the ad- [fol. 295] ditional service would not be economical. In exhibit 117, the figure of 5.8%, representing the relationship of per diem on inbound traffic to revenue, is not an exact figure. This group of statistics covered only carload shipments and we spread way freight over practically all inbound shipments as it is convenient to do so, so that the majority of the cars which come in for outbound movement come in with a partial load of way freight. Perhaps there will be two or three thousand pounds in a car. Of course, that per diem is not assignable to the outbound movement until the car is released, whereas, that tonnage could be concentrated into a very small proportion of the cars in which it now moves, so that the empty movement would be assignable to the outbound movement. To get the detention of cars on foreign lines, shown on that exhibit, I added two days to the date of the original waybill, and assumed that the shipper used his full quota of two days free time (Tr. 1542). If a foreign line had to haul the car to the point of loading, the per diem it paid might have been more than that and our per diem also might have been more. I do not think the figures, however, are estimates because you can pick out any particular case out of the detail statistics, but taking the statistics as a group I think there would be compensating ratio so that the net result would be nearly correct. On the inbound traffic we paid 5.8% of our gross revenue in per diem and the New Haven paid 7.2%, but I think that is fair because the

foreign line moves the car as an overhead shipment. The originating line is the only line whose per diem charge in relation to their revenue should be in proportion to ours, because they allow free time to the shipper and we allow free time the consignee (Tr. 1543). The 7.2% includes all foreign lines, whether originating, intermediate or terminating carriers. In getting the foreign lines' per diem on [fol. 296] the shipment until it is actually set for loading (Tr. 1544). In getting our own per diem I included per this exhibit I have assumed that the car is not assigned to diem on the empty car from the time it was interchanged to us if the car was for a particular shipment. We did not do that for the trunk lines because interpreting as I did, if they brought a car in from another line specifically for a particular shipment, the per diem for that would be assignable to the shipment. I do not think that gives the trunk lines the worst of it (Tr. 1545). I have no particular suggestions that I would make to the Central Vermont respecting car hire, if the Central Vermont was free to make an agreement with us. All we want is a change in the rule which would permit us to make an agreement which would reduce our car hire expense. We are willing for the present arrangement to continue because of our arrangements with the Central Vermont. We want the rules flexible enough to permit us to make a local arrangement with the Vermont Central (Tr. 1546). The arrangement I speak of has nothing to do with car hire but is an operating proposition. But so far as the short line is concerned, I do not think that divisions can be separated from car hire or joint facility can be separated from divisions I think they are all taken into the picture together. The local arrangements I speak of do not have the effect of offsetting per diem (Tr. 1547). We do switching for the Central Vermont in their yard, for which they pay us. Car hire does not enter into it because the cars are in the possession of the Central Vermont (Tr. 1548). The White River is capitalized at $250,000 and the final valuation is about $390,000. We serve a population of approximately 6,000 through three stations and a joint facility station. I think the communties would die if the railroad was abandoned as there is no other railroad which serves these stations (Tr. 1549). We have no defined switching dis-

tricts at any of the towns. We own two locomotives. Our [fol. 297] first track mileage is 19.34 with about 2 miles of side track (Tr. 1550). In 1925 we interchanged a total of 1215 loads and empties with the Central Vermont. Most of the cars are loaded only one way. We held those cars 3424 days (Tr. 1551). I will submit a statement showing the loads interchanged in 1925 and 1926 and the detention on them. I will also include the demurrage collected in each year and our net railway operating income for the years 1922 to 1926 (Tr. 1552). We operate through mountainous territory. The railroad is primarily a freight road and is owned by people outside the community (Tr. 1553). The Springfield Terminal Railway is an independently owned and operated electric railroad common carrier. It is a terminal carrier in the sense that it only serves Springfield, Vermont, giving this town a connection with the Boston & Maine at Charlestown, N. H., 6 miles away. Springfield is a manufacturing community; the immediate environs are primarily engaged in agriculture. As a result freight traffic is made up of supplies for, and products of two types of industries which nearly balance each other. The inbound and outbound tonnage is about in balance; we have enough business so that two turn-about runs are made daily, and we have small empty car mileage. Our per diem cost is under control and varies with the volume of business handled. It is a short line whose car hire circumstances are favorable, but there are other operating factors that make up for any advantage which we may have as to per diem costs (Tr. 1555). We operate in a valley with difficult grades with the right of way half the distance on the highway and our operating expenses are high. We are not now primarily concerned with per diem, but conditions may change over night and turn the situation the other way, and [fol. 298] to protect ourselves we are entering our protest against the arbitrary stand taken by the American Railway Association. We do not believe that *that* fixed rules and fixed averages can be applied to all short lines arbitrarily with any semblance of justice. We ask that our railroad be allowed to trade freely with trunk line connections on the subject of car hire. At the present time we escape per diem on most cars because shippers load promptly so that we can return cars in one day, but if shippers took the full free time allowed (Tr. 1556) it would be a different story.

We are at the mercy of the shippers. Electricity is the only power on the Springfield Terminal, and it owns no freight cars. It settles per diem under the A. R. A. Rules, which is not a burden because the shippers do not use the free time allowed them under the demurrage tariff (Tr. 1557). If they did, our detention would be increased, and that is our primary fear; that and the fact that our outbound tonnage of lime and lumber is dwindling all the time, so that eventually we will have an inbound movement considerably extended and an outbound movement so we will have a much larger empty car movement which will increase average detention. We handle no local business. All of it is interline. Some of our rates are through rates, some proportional and some arbitrary. The company performs no switching service (Tr. 1558). We get divisions of the through rates and on the other traffic get our local rate. In both cases we perform a line haul service. None of the industries hold any stock in it. It makes enough money to pay its interest and some dividends on preferred stock in addition to operating expenses. It operates under the National Demurrage Rules (Tr. 1559). Our demurrage collections are negligible but we fear this may change, in which event we wish to be free to trade on per diem with the Boston & Maine which is our only connection (Tr. 1560). I have no idea what changes we might ask for. [fol. 299] Our principal commodity is coal inbound; outbound, machinery and reworked wool, with lime and lumber. The road has issued $100,000 of common stock and $82,500 of preferred. Our book investment is about $570,000 (Tr. 1561). The road has about 6½ miles of main track and about 3 miles of side track. The total population served is about 10,000 of which 6,000 is in Springfield (Tr. 1562). We operate four locomotives. I will furnish a memorandum giving operating revenue, freight revenue, net railway operating income and demurrage collections for the years 1923 to 1926. Our power comes from our own power house at the end of the line most distant from the Boston & Maine (Tr. 1563). We generate power by using water. The road is on straight per diem which it pays direct to the Boston & Maine but the accruals are low. It is not a subscriber.

HARRY A. BROME was called as a witness and, being duly sworn, testified as follows (Tr. 1564):

I am General Manager of the Unadilla Valley Railway. The present Company began operations in 1904 and is the successor of two predecessor companies that went bankrupt (Tr. 1565). The road is 20 miles long and connects at one end with the D. L. & W. at Bridgewater, New York, and at the other end with the New York, Ontario & Western at New Berlin, New York. It serves an agricultural community. It is not an industrial road but has been classified by the Commission as a Class III common carrier (Tr. 1566). No industry on the road is interested in it. I have statistics to show our cost of handling a freight car and what it will earn for us, and these statistics show that if we did not get any freight from our connecting lines we could not afford to handle freight cars.

Mr. Towner: It does not seem to me that the cost of handling freight cars and their revenue received has any place in the proceedings (Tr. 1567).

[fol. 300] Examiner Rice: Just try and give us the facts.

The Witness: This is not a question of rates. It is a question of divisions of the rates (Tr. 1568). What we want to say is that our proportions of the rate are not more than sufficient to pay the cost of handling the car and its contents. We handle all our cars on a proportion of the local rate. Our local traffic is more or less negligible. We handle traffic on local rates in our own cars. I am talking about traffic that we can get from our connecting line, handled in interline business in their cars. Division of the rate and per diem settlement are linked together.

Mr. Towner: That is just an example of the situation we get into. I do not like to (Tr. 1569) delay by objecting, but I cannot see what this has to do with the issue here. * * * Why don't you start a divisions case?

The Witness: We are going to, but with a short line it is necessary that all their earnings are linked together, that is their expense of car hire and their proportion of the freight rate (Tr. 1570).

Examiner Rice: We won't consider the reasonableness of the divisions, but we will note the objection and receive

the testimony for what it is worth, showing what bearing it has on the car hire situation.

Mr. Hitt: We are not trying a divisions case, it is true, but in connection with considering the whole car hire situation, the surrounding facts to show whether it is reasonable or not or how it is arrived at, it is oftentimes necessary to know how divisions are fixed, what the understanding was, and the basis as an incident to the consideration of the per diem situation, and it is very necessary to take them into consideration, and we dissent from the proposition that you must exclude anything that might have any relation to divisions. This is an investigation by the Commission (Tr. 1572).

[fol. 301] The Witness: We are not attempting to bring in the question of divisions or rates. We are just going to show how much we earn to pay for the car while it is in our possession. We are not saying whether our divisions are enough or whether the rate is enough. Our divisions were made thirty years ago and were based on a car hire of 6/10 of one cent per mile (Tr. 1573). The divisions have not been changed but car hire is now 6¢ a mile. The D. L. & W. allows us 2¼ days free time (Tr. 1574). There is no clause in the per diem rules that allows the A. R. A. roads to give the free time. We get free time because of the necessity for it. The N. Y. O. & W. allows us two days. Our traffic is principally outgoing milk handled in milk cars and incoming grain handled in freight cars (Tr. 1575). We handle the milk as freight. A milk car for which we pay 2½¢ a mile earns us $1.68 per car mile, and a freight car earns us 88¢ per car mile. 53% of the cars handled on the railroad were per diem cars (Tr. 1576), that is for the year 1926. They earned 39% of the freight earned but cost 54% of the expense. That shows that the freight cars do not pay their proportional share of fixed charges. That is due to the small proportion of earnings we get out of them. If we were allowed no free time on freight cars we would lose $1.41 a car where we now make 80¢ (Tr. 1577). The milk cars are handled on a mileage basis at 2½¢ a mile and have nothing to do with per diem. If we paid straight per diem the total earnings on all cars would be $7.36 per car (Tr. 1578). We have 19.13 miles of main track and 4.58 miles of side track. The road has been

valued but I do not recall the amount. Our book investment is between $400,000 and $500,000 (Tr. 1579). The Commission allowed between $300,000 and $400,000. We have 3 locomotives and 16 freight cars, which are not interchanged but are used in our local service. We handled 1670 per diem cars in 1926. 85% of our traffic in those cars is inbound and 15% outbound (Tr. 1580). We handled 1446 [fol. 302] milk cars. Our service is purely line haul and we are not allowed any credits for switching. When perishable freight is coming to us our connections put it on the interchange without asking us whether it will be convenient. For instance, just last Tuesday the Ontario & Western gave us three cars of live stock after our freight train had gone. We made a special movement on those three cars, and when we got back to our terminal we found the Lackawanna had given us two cars of live stock at the other end. We had to make another special movement to get that (Tr. 1581). They tell us it is all in the game, but the point is that it is a costly operation. I had to pay five men extra pay Sunday to handle three cars which paid us 80¢ a car. Our gross revenue in 1926 was $107,047.85 and our net railway operating income was $17,561.85 (Tr. 1582). That was a fat year. I think for the last five years we averaged between $4,000 and $5,000 net. One county in the State of New York has trebled our taxes this year and we will have to go to court. They put a fictitious value on our railroad, and want us to pay on that basis (Tr. 1583). They did the same thing to the D. L. & W. I will furnish a statement of our gross operating revenue, net railway operating income, gross freight revenue and per diem payments for the last five years, and demurrage collections (Tr. 1584). Last year we had a lot of temporary traffic on a state road contract which accounts for it being a fat year (Tr. 1585).

Cross-examination:

Our road was classified as a common carrier. 6/10 of a cent a car mile which we formerly paid was on the mileage basis before per diem was heard of. The cost of 6¢ per car which we now have is based on the average number of cars on our road in 1926 (Tr. 1586). The total number of cars in 1926 was 1670. The total number of days was 6417. The free time allowance was 3503 days. We paid

for 2721 days at the per diem rate or $2721 (Tr. 1587). I [fol. 303] used the mileage those cars went on our road, the total number of cars and the per diem paid to get the 6¢ per mile. It would have been much higher if we had paid straight per diem. Our detention of 3.84 days was due to snow and ice conditions (Tr. 1588). While we are fighting snow and are blocked, our connecting lines do not stop giving us cars. When they get blocked with snow, the cars bunch up at that terminal, and when they get their road open, they give us that bunch of cars. That detention is a little high. The D. L. & W. allows us 2¼ days' free time and the N. Y. O. & W. allows us 2 days' free time (Tr. 1589). During Federal control we had two days' free time. Our connections, after we had a hearing with them and they had investigated the facts, allowed us our free time on our contention (Tr. 1590). Prior to Federal control we had 2½ days' free (Tr. 1591). This was with both roads. We get divisions of joint rates on milk but we would like to get more than $1.68 per car mile if we could. We get 80¢ per car mile on our other freight. I mean by that that we make 80¢ and $1.68 net profit. In that $1.68 is operating cost per car; then your 88 cents is operating cost. The operating cost on a freight car per mile is 88 cents; on a milk car, $1.68.

Mr. Hitt: I suggest this document be offered in the record (Tr. 1593).

(Said document received in evidence as Exhibit No. 118).

The Witness: The statement shows that we earn 9.3 mills per ton mile on all freight except milk and 22.3 mills per ton mile on milk (Tr. 1594). The operating costs on this exhibit include our car hire costs. 75% of our traffic other than milk consists of feed (Tr. 1595) and less-than-carload merchandise. We have not made any complaint of our earnings on milk. We get 25% of the New York rate on it. On other commodities the divisions vary (Tr. 1596). On other traffic we get 20% of the earnings east of Buffalo [fol. 304] out of the Chicago rate, plus an arbitrary of 5¢ a hundred pounds. Our milk rates are divided with one carrier and our rates on other commodities are divided with many carriers (Tr. 1597). That may account for our not getting 25% on other traffic. I concede the right of a

connecting line to give us this freight when it arrives and is ready for delivery, but they ought to consider that we are a short line. It makes our operating cost mount, although they do not exceed their rights (Tr. 1598). They ought to continue to carry the burden as they are better able to than we are (Tr. 1599). We will not handle cars on per diem and lose $1.41 a car. If our present arrangement is eliminated, we want enough either out of the division of the rates or some other arrangement so as to handle the car with the same profit we get now. Our freight cars do not pay their proportion of our fixed charges, and our statistics show that the milk we carry has to pay the general expenses. We would want the divisions adjusted. We want our traffic to pay for itself, just as our connections. They do not want to handle traffic that is not paying and won't handle it (Tr. 1600). We could not increase out local rate, as they have no bearing. All of our interchange traffic moves on through rates, out of which we get a division (Tr. 1601). Our local traffic is not 1/10 of 1% of all traffic. We run two trains daily each way and often have to run a third. I will include the valuation figures and our 1926 book investment figures, together with a statement of our car hire arrangements from 1916, in the statement I am going to furnish (Tr. 1602). When we paid car hire on a mileage basis of 6/10 of a cent per mile the drafts were so small that we did not pay anything. I will also furnish our detention figures for 1924 and 1925 (Tr. 1603). 20% of our cars are loaded both ways. Our allowances from our connections are per car unit and not per loaded car. If our car is loaded both ways, received from [fol. 305] the Lackawanna and delivered back loaded, our free time would be 2.25 days (Tr. 1604). We did not buy freight cars because 85% of the cars that we receive we return empty. If we bought freight cars it would complicate the situation (Tr. 1605). Our connections said that they would object to loading our own cars out. It would be unfair for us to load our own cars and give them their car back empty. The American Railway Association published a circular stating that a road such as ours, if it purchased cars and had freight which it originated, it would be expected to call on the trunk line to furnish cars before we could use our own cars for loading out. We publish the National Car Demurrage Rules (Tr. 1606). We con-

templated buying freight cars until we saw the absurdity of it.. We wanted to buy some milk cars but our connecting lines don't want us to buy any because they know they would have to pay for them; free time is not allowed on those cars, they are paid for on mileage. The A. R. A. roads seem to insist that short lines ought to own their own equipment (Tr. 1607). Our arrangement for free time with the D. L. & W. is temporary, awaiting our buying our own equipment.

H. C. FINCH was called as a witness and, being duly sworn, testified as follows (Tr. 1608):

I am Vice President and General Manager of the Genesee & Wyoming Railroad which is located in Livingston County, New York. I filed an answer to the questionnaire of the Commission.

Examiner Rice: The answer is now a part of the proceeding.

The Witness: Questions 10, 11 and 15 of the questionnaire were not answered but we have furnished that information to the Commission by letter.

(Said letter received in evidence as Exhibit No. 19.) (Tr. [fol. 306] 1609.)

I have prepared a statement showing the average detention by months for each year 1919 to 1926, inclusive.

(Said document received in evidence as Exhibit No. 120.) (Tr. 1610.)

Had we paid per diem in 1926, it would have been 11.40% of our gross freight revenue and in the first six months of 1927 would have been 12.17%. Most of the cars we receive from our connections are system cars. We use no foreign cars in local service (Tr. 1611). When we receive a car from one connection and deliver it to a different one, we send to both roads a junction card showing the road received from, the road delivered to, the time, and whether loaded or empty. We are satisfied to continue on the present car hire basis. The road is an associate member of the A. R. A. and applies the National Car Demurrage

Rules, and we also comply with the A. R. A. Interchange Agreement (Tr. 1612). From 1899 to 1902 we paid mileage at the rate of 6/10 of a cent per mile; from 1902 to 1918 per diem on foreign cars and mileage of 6/10 of a cent on cars of the direct connections; from 1918 to 1921 straight per diem; and from 1921 to date modified demurrage or the Birmingham Southern basis. Our principal industries are two salt mines and salt is the principal tonnage handled (Tr. 1613). It is shipped in bulk and in bags requiring clean cars and we clean and cooper the cars at our own cost. I have prepared a statement showing for four months of 1926 the total number of cars handled for shippers, the aggregate detention and what detention is chargeable to the carriers and shippers.

(Said document received in evidence as Exhibit No. 121.) (Tr. 1614.)

.82 days' detention is chargeable to shippers and 1.93 days is chargeable to the carrier. Carrier detention chargeable to the Genesee & Wyoming was principally in connection with switching, classifying, coopering and cleaning cars (Tr. 1615).

[fol. 307] Cross-examination:

The switching I refer to in Exhibit 121 is not terminal switching; it is just shifting the cars (Tr. 1616). It is the same kind of switching that a trunk line would have to perform if it served the industries direct, without the intervention of the Genesee & Wyoming. We receive a division on practically all freight. They were fixed principally in 1895 and the basis for the division has been increased or decreased as the rates have increased or decreased. There has been no adjustment because of car hire (Tr. 1619).

Examiner Rice: The case is adjourned to Pittsburgh, Pa., September 12, 1927.

Proceedings at Pittsburgh, Pa., September 12 and September 13, 1927

Examiner Rice: The Commission has set for further hearing at this time and place, Docket 17801, Rules for Car

Hire Settlement between Railroads and the various cases which have been consolidated therewith (Tr. 1635).

C. A. WITZEL was called as a witness and, being duly sworn, testified as follows:

I am Vice President of the Euclid Railroad and am also in the real estate business (Tr. 1639). I was connected with the Baltimore & Ohio Railroad for 37 years and am familiar with switching in Cleveland (Tr. 1641). I have a map showing the location of our railroad.

(Said document received in evidence as Exhibit No. 122.) (Tr. 1642.)

[fol. 308] This map shows all of the trunk line railroads in the region. There are no railroad facilities except our road southeast of the Nickel Plate. Our railroad was incorporated in 1883, and the present owners acquired it in 1919 and have since operated it (Tr. 1643). W. H. Kelly and I now own all the stock in the railroad. I also own stock in the Green Road Realty Association which owns 120 acres of adjacent land. The railroad and the Realty Association are entirely disassociated (Tr. 1644). The Association makes no shipments over the railroad. The railroad leads off from a point called Euclid Junction, about 8 miles east from the center of Cleveland to what was formerly some quarries. It has increased its service and become a distributing agency for a quantity of materials in that region (Tr. 1645). It lies in a residential and retail business section. The railroad serves a number of industries (Tr. 1646), and operates some team tracks. Some of the industries have bought lands from our Association (Tr. 1647). The Commission decided at 79 I. C. C. 27, that the railroad was a common carrier, and its status has not altered since then. Its line commences at Euclid Junction in Cleveland and runs between Cleveland and the village of Euclid and South Euclid (Tr. 1648). The valuation report of the railroad is at 114 I. C. C. 203, in which it was stated that the company was controlled by the Cleveland Stone Company and operated 1.451 miles of main track and .67 miles of additional main track, which were jointly owned and used with the Nickel Plate Railroad, and .512

miles of yard track and sidings. The railroad is not now controlled by the Cleveland Stone Company (Tr. 1649). The railroad filed with the Commission an answer to a questionnaire which it received (Tr. 1650).

(Said document received in evidence as Exhibit No. 123.)

The figures in this exhibit, under Question 7, are for 1925. Since 1919 the railroad has paid per diem without reclaim. In 1925 it handled 1483 cars and in 1926, 2105 [fol. 309] cars (Tr. 1651). This year we are handling cars at the rate of 2600 or 2700. We have about 105 regular shippers and serve a population of about 40,000. I have a statement of our revenue and expenses.

(Said document received in evidence as Exhibit No. 124.) (Tr. 1652.)

This exhibit shows a gradual reduction in detention and an improvement in traffic. We file annual reports and tariffs with the Commission (Tr. 1653). Euclid Junction is in the Cleveland switching district but we do not have reciprocal switching, as the Cleveland lines have refused to absorb our charges which are $10 a car. On some service, however, we have a lower charge. Exhibit 124 shows a deficit for every year (Tr. 1654). The Commission assigned a value to the road of $29,861 as of June 30, 1918 and we protested it (Tr. 1655) but did not attend the hearing (Tr. 1656). We were allowed a valuation of $29,000 as against a stock issue of $30,000 (Tr. 1657). Our depreciation cost of reproduction was $17,340 and our land was $11,637.09. I think the land is worth from $40,000 to $70,000 (Tr. 1658). Since valuation we have spent $15,080 in additional betterments. If the road is admitted to the Per Diem Agreement, we expect the usual reclaim of $5. If the railroad should prefer, we would be willing to take a reclaim on the actual record (Tr. 1659). No shipper is interested in the stock of the railroad.

Cross-examination:

Euclid Junction is within the switching limits of Cleveland on the Nickel Plate. South Euclid is not within those limits (Tr. 1660). Our railroad is on the border line between Euclid and Cleveland, and is in effect in Cleveland.

The land which we own is not served by any transportation other than the railroad (Tr. 1661) although they now have busses. Our territory has about the same transportation [fol. 310] as other parts of the city of Cleveland has. The railroad owns no engines and no cars and originates very little business (Tr. 1661-a). We rent our engines on a contract basis from the Nickel Plate. When a car goes to our industries it is hauled by a Nickel Plate engine and we pay the Nickel Plate an agreed amount for its use. The Nickel Plate also furnishes the crew. On all such cars we pay per diem without reclaim (Tr. 1662). The activities of the railroad are about confined to owning the rails and right of way (Tr. 1663).

Mr. Hitt: The answer filed by this railroad is to the questionnaire which was sent out by the American Short Line Railroad Association (Tr. 1664).

The Witness: On Exhibit 123 the same 46 cars were referred to in Question 9 and Question 13. They are the outbound. Question 14 shows the 1925 figures and Question 15 are the demurrage rules (Tr. 1665). The Bliss Road, which is two and one-half miles east of Euclid Junction is the eastern limits of the Cleveland switching district (Tr. 1665). Our railroad joins in no through rates but collects an arbitrary charge of $10 a car with three exceptions. Our charge is not absorbed by the Nickel Plate but is in excess of Cleveland rates (Tr. 1666). We charge less for three industries because they are within 500 feet of the Junction. Those three plants are served direct by the Nickel Plate and are considered as being upon that railroad. That is the effect of our arrangement (Tr. 1667). I do not know what percentage of our cars shown on Exhibit 123 have origin or destination in the Cleveland switching district. I said that the $5 reclaim was usual in the city of Cleveland (Tr. 1668). Our reclaim would be determined by a check of our figures and might be less than $5. Our railroad now has an application on file to join the American Railway Association. We think we perform a terminal [fol. 311] switching service which would entitle us to reclaim (Tr. 1669). If our application is accepted we would expect to be bound by the Reclaim Rules of the Association, and think that is the best way of disposing of this question. Under our contract with the Nickel Plate, we pay

it $2.50 a car, which includes the locomotive, crew and service. That is the operating agreement under which we compensate the Nickel Plate for use of its engines and crews. The movement to the three particular industries is by the Nickel Plate, and they are treated as Nickel Plate industries (Tr. 1671). They pay one-half of the maintenance of the track and charge demurrage direct against the shippers. I have never asked the Nickel Plate for a division of through rates, although they told me that they would consider it. I think we are a terminal line furnishing terminal facilities, and should be on a terminal switching line basis (Tr. 1672). Our plan was to reduce our charge from $10 to $7.85, if we could collect $3.15 from the Nickel Plate, which is the same amount that railroads in Cleveland give each other. If the A. R. A. turns down our application, I do not care what I get, whether reclaim, free time or demurrage, so long as I get something (Tr. 1674). I would prefer to be considered a regular railroad and receive per diem and either get a reclaim or such increase in rates as will give me a fair return. Most of our inbound traffic goes to South Euclid, which is not in the switching limits (Tr. 1675). The Cleveland switching limits are decided arbitrarily by the various railroads. The Nickel Plate includes in the switching limits certain industries on the Euclid Railroad, and it is in its power to cover South Euclid (Tr. 1676). There are thousands of cases of switching performed in Cleveland beyond the property rights of the railroads, such as switching for industries and spotting cars. All of our revenue is derived from freight traffic (Tr. 1677). We have [fol. 312] no passenger service. I think that the simplest way would be to settle our per diem with the Nickel Plate direct, which would cast upon the Nickel Plate the burden of settling with other railroad (Tr. 1678). Each trunk line railroad in Cleveland determines its own switching limits, and the Nickel Plate could include South Euclid (Tr. 1679). In practice, we are obliged to accept the Nickel Plate's designation of switching limits, but we could get out a switching limit and in it include anything we please on the Nickel Plate although it would not obligate it to accept, as we are not in a position to enforce our views. South Euclid is about 1-1/8 miles from our terminal, so that our team tracks are that distance from the center of South Euclid. Shippers team from our tracks to South

Euclid and to the vicinity where these 40,000 people live. It obviates the necessity of trucking up a very bad hill, and the railroad terminals are so located that it saves them a four or five mile haul (Tr. 1680). The community which we serve is growing very rapidly. It is served by busses which parallel our line. They have the same facilities to get freight out to this territory from other railroad terminals in Cleveland as all other parts of Cleveland have (Tr. 1681). To that extent our territory has the same service that other parts of Cleveland have. Lots of industries in Cleveland are not on railroads and if our industries were not on this railroad they would get the same service that the other industries get, although some of them could not exist without railroad service. Our railroad saves four or five miles drayage to our industries (Tr. 1682).

J. M. MORRIS was called as a witness and, being duly sworn, testified as follows:

I am Vice President of the Benwood & Wheeling Connecting Railroad and the McKeesport Connecting Railroad. There have been no changes in the stock ownership or operation of those railroads since the reports of the Commission at 61 I. C. C. 590 and 62 I. C. C. 357 (Tr. 1683). I have had railroad experience for 41 years. The mileage [fol. 313] of the Benwood & Wheeling is 3.8 miles of main track and 4.33 miles of yards and sidings. It has 11 locomotives (Tr. 1684) and owns 25 freight cars. Our principal industries are the plant of the National Tube Company and the Cement Solvay Company. The Tube Company has not run for two years. The railroad still files its demurrage tariffs and collects demurrage from industries on its line. The Birmingham Southern Rules were made retroactive on the Benwood & Wheeling to March 1, 1914 and we are now working under them. Prior to then we were under the per diem and reclaim rules (Tr. 1685). In 1925 the railroad collected $17 in demurrage from industries but paid no car rental to the trunk lines. In 1925 we interchanged approximately 40 cars a day. We are satisfied with the Birmingham Southern Rules, but would be satisfied to have per diem and reclaim established if we were allowed sufficient reclaim to enable us to function (Tr. 1686).

We now have three days' free time, and we need that much since our industries get two days' free time under the demurrage tariff. If the Birmingham Southern basis was abolished and another reclaim basis put in, we would have to have an increase in our terminal allowance to take care of car hire (Tr. 1687). All of the cars handled by the Benwood & Wheeling are in switching service and we have no overhead service (Tr. 1690). I have prepared an analysis of our car detention.

(Said document received in evidence as Exhibit No. 125.)

I have also prepared a similar statement showing similar detention on the McKeesport Railroad for 1926.

(Said document received in evidence as Exhibit No. 126.) (Tr. 1691.)

Cross-examination:

Examiner Rice: The answer filed by the Benwood & Wheeling to the questionnaire of the Commission is part of the record.

The Witness: The Benwood & Wheeling performs only [fol. 314] terminal switching and does not participate in joint through rates. Up to the time the Birmingham Southern rules were established, the road settled per diem on the American Railway Association basis. In 1925 it paid nothing in per diem (Tr. 1692). If we went back to the American Railway Association basis, we would not want to pay anything. We should have one day to get the car in and the industry should have 48 hours to unload. If we were given a reclaim figure covering average detention to all cars, it would be satisfactory if we got out all right. We use our own cars on the interterminal traffic, so no question of per diem or reclaim would come into that (Tr. 1693). Under the A. R. A. Rules we would have to pay per diem on intermediate traffic, but we have none. Our cars are not interchanged, but if we did interchange them we would expect to receive per diem. We publish the same demurrage rules as other carriers (Tr. 1694). We would be satisfied under the A. R. A. Rules if the reclaim period made us whole on our per diem payments. If it did not, we would have to have an increase (Tr. 1695). If we did

not lose any money we would be satisfied, but I am of opinion we should have nothing less than three days. If our average detention on the cars in Exhibit 125 was only 2.36 days and we were allowed a three day reclaim under the A. R. A. Rules, we would make money out of reclaim, but we are a common carrier and should be given the same treatment as other common carriers (Tr. 1696). Under the A. R. A. Rules, if we handle the cars quickly, we are penalized by a reduction in reclaim, which I think is wrong. Under the A. R. A. Rules we would be unable to make profit on reclaim. We do not make any profit out of the other rule; we are out of pocket. All of our business is freight business and we do not participate in joint rates (Tr. 1697). Our charges are absorbed to the extent of 4½¢ a ton (Tr. 1698). There would be no practical difference, other than [fol. 315] the extra cost of accounting between what we have and the A. R. A. basis of car hire if we had a sufficient reclaim. I think our accounting cost would be about the same (Tr. 1700). The McKeesport Connecting Railroad has a total of 14 miles of main, yard and siding track and 16 locomotives. In 1925, we had 92 freight cars and we now have 82. The Tube Company also has 127 of its own cars. We serve three large industries, National Tube Co., American Sheet & Tin Plate Co., McKeesport Sand & Supply Co. We publish the Uniform Demurrage Rules and our industries are parties to the average agreement (Tr. 1701). The situation as to the establishment of the Birmingham Southern Rules is the same on the McKeesport as on the Benwood & Wheeling. In 1925, the McKeesport paid $237 to the trunk lines for cars. It interchanges from 250 to 260 loaded cars a day and is satisfied with the Birmingham Southern basis. What I have said with respect to that basis as to the Benwood & Wheeling applies to the McKeesport Connecting (Tr. 1702). Exhibit 126 also applies to it (Tr. 1703). I do not know what our reclaim was before the establishment of the Birmingham Southern Rules, but I think it was about four days.

I. W. Langford was called as a witness and, being duly sworn, testified as follows:

I am Auditor of the Lake Erie & Fort Wayne Railroad Company. It was built by the business men of Fort Wayne

about 1903 (Tr. 1706). Its stock is owned by stockholders of a Land Company and a Rolling Mill Company. The history of the road was gone into by the Commission in 58 I. C. C. (Tr. 1707). When the road began business, all of our traffic was switching. We charged $2 a car and the trunk lines absorbed all of it without collecting per diem and they collected demurrage direct from the industries. That continued until 1923 when the decision of the Commission at 78 I. C. C. 475 took effect, prescribing the [fol. 316] Birmingham Southern plan and we have continued on that basis since.

Examiner Rice: The answer of this road to the Commission's questionnaire is part of the record.

The Witness: The present basis is satisfactory to us and our connections are also apparently satisfied (Tr. 1708). I will furnish for the record copies of the correspondence from which I conclude that our connections are satisfied (Tr. 1709). All of our traffic is switching, and if we were a subscriber and got sufficient reclaim, the result would be the same under the Per Diem Rules as under the Birmingham Southern Rules (Tr. 1710). It would be a disadvantage to us, however, because of the great increase in accounting. We would have to report all cars to owners and settle with each owner and then make up our reclaim. It would cost us not less than $2,000 a year and would be money wasted. I have prepared a statement showing our average detention in 1926 to be 2.14 days per car.

(Said document received in evidence as Exhibit No. 127.)

We have no local traffic except that a few cars are handled in interplant switching for which we charge the industries (Tr. 1711). Only 183 such cars were handled last year out of a total of 4161. 40 to 50 per cent of our traffic is handled for industries and public team tracks other than the rolling mill. For several years we have had an operating deficit due principally to increased labor costs, and we have been unable to get our switching rate increased enough to take care of it. Our switching rate is $3.60 per car, of which $2.70 per car is absorbed by the connecting lines. Our industries object to paying the difference of 90¢ (Tr. 1712). We have been unable to get our connections to absorb this additional amount. I would

say that our switching charge never included anything for cost of car hire. Our gross revenue is $1.678 per car per day and if we had to pay $1 without reclaim it would be reduced to .678¢ per day.

Mr. Hitt: I will offer in evidence a copy of the answer to the questionnaire prepared by the Interstate Commerce [fol. 317] Commission and sent out by the American Short Line Railroad Association (Tr. 1713).

(Said document received in evidence as Exhibit No. 128.)

When we started in business in 1904, $2. was fixed as our charge by mutual agreement (Tr. 1714). It was absorbed by the trunk line carriers and continued in effect until 1916. In 1915, after the trunk lines had been given substantial increases in rates, we published a tariff increasing our charge to $2.50 a car but the trunk lines declined to absorb more than $2. (Tr. 1715). In 1918 after the Commission authorized another general increase of 25 per cent., on all freight rates, we increased our charge to $3. a car and the trunk lines increased their absorption to $2.50 a car. In 1920, when the Federal Railroad Administration authorized a 40 per cent increase in all freight rates, our charge was increased to $4., of which the trunk lines agreed to absorb $3. In 1922, the 10% reduction came along, which reduced our $4. charge to $3.60, and the trunk lines reduced their absorption to $2.70 per car, and this has continued until this time (Tr. 1716).

Cross-examination:

We have never asked the Commission to compel the trunk lines to absorb the additional amount; we have talked about it and discussed it with officials of our connections. We have hoped that they would do it and in the meantime have let the industry suffer (Tr. 1717). The increased accounting expenses that I referred to under the A. R. A. Rules would result from our making per diem settlements direct with the car owner and then making reclaim against our connections. At the present time our direct connections, the trunk lines, are assuming this burden, which I say would be money wasted if we had to stand it. In Exhibit 128 the traffic listed as "local traffic", I call "intraplant switching" (Tr. 1718). This whole service was performed by our

railroad to allow the industry to unload part of the cars in two different places, and the revenue we collected was in addition to the revenue on the inbound shipment. The cars used were those that the load came in, and we kept the revenue (Tr. 1719). My average detention statement for 1926 shows that while the industry itself is entitled to two days free time in all cases, we have taken very little of [fol. 318] that three days that is allowed us in order to perform that service—14/100 of a day, an average for the year. On page 2 of Exhibit 128, I have shown the intermediate moves between the trunk line designated and the industry. The cars were not handled between trunk line connections (Tr. 1720). The demurrage that we collect from industries we turn over to the connecting trunk lines under the Birmingham Southern basis (Tr. 1721). We do not retain that demurrage. We collected $435 demurrage from the industries and paid $127 to connections, retaining $308. We join in no through rates (Tr. 1722). All of our service is terminal switching service on a flat carload rate.

Redirect examination:

If our connecting lines settle for our car hire, it is just a question of their settling for a few more days, since they make settlements under their per diem rules at the present time (Tr. 1723). Our service is all freight and we paid no per diem prior to the establishment of the Birmingham Southern basis. We have no movement over half a mile. Our tracks are all inside the City of Fort Wayne. We participate in the National Car Demurrage and Storage Rules (Tr. 1724). We are not a subscriber to the Per Diem Agreement.

GEORGE A. RITTER was called as a witness and, being duly sworn, testified as follows:

I am Secretary and Auditor of the Bloomsburg & Sullivan Railroad. We have furnished an answer to the questionnaire.

(Said document received in evidence as Exhibit No. 129.) (Tr. 1725.)

The answers to questions 2-A and 2-B in this exhibit should show that the railroad is not industrially owned.

Originally we paid no car hire at all. Prior to 1902 we paid some car hire on a mileage basis, but this did not amount to much. After per diem was adopted the D. L. & W. collected per diem with four days' free time. The Reading allowed us two days' free time for some years and [fol. 319] then discontinued it. The Pennsylvania never allowed us any free time (Tr. 1726). During Federal control we signed the short line contract and were allowed two days' free time. After that our three connections required us to pay straight per diem without free time or reclaim. The answer to question 20 in Exhibit 129 shows our net railway operating income from 1920 to 1925. We made only $31.01 in net operating income in 1925. We did a little better in 1926, but in the last seven months we are not earning our operating expenses. Our overhead business between the Reading at Bloomsburg, Pa., and the Pennsylvania at Paper Mill, Pa., enables us to live. It is about three times the volume of our other business (Tr. 1727). As a rule we can handle that traffic in one day and are willing to go along on it under the straight per diem rule. We have a small amount of local traffic which we handle in our own car. We want relief on interline traffic originated and delivered on our line (Tr. 1728). I have made a study of that traffic to see how our per diem costs compare to earnings to us and to our connecting lines. I took the bill of lading date, plus an arbitrary of two days at the loading end, and computed the time down to the time we gave the cars back to our connections. Then I calculated the total charges on each car and divided the earnings on each car.

(Said document received in evidence as Exhibit No. 130.)

It shows that on inbound cars we paid 48.09 per cent of the per diem and received only 28.45 per cent of the charges paid by the shipper (Tr. 1729). I think we should be treated as a switching road on the traffic we originate or deliver, since we gather up traffic on which our connections get a profitable line haul, and we are as much entitled to a reclaim for the per diem on such business as is a switching road. It would cost us considerable to make car reports to all car owners and settlements with them. It would be more economical to make our settlement with

our connections. I have prepared a statement showing that [fol. 320] two-thirds of the cars handled by us are owned by our connections (Tr. 1730).

(Said document received in evidence as Exhibit No. 131.)

Cross-examination:

We are willing to handle our intermediate and local traffic in accordance with the rules of the Association. On originated and delivered traffic we want an arrangement which will relieve us of all car hire expense (Tr. 1731). Our road is about 20 miles long and some of our originating traffic might be hauled the entire distance of 20 miles. We do not exactly want the cars furnished to us for nothing on such a haul, but we want to even up. I think we ought to have four days' free time but have not figured what that would mean in the way of per diem payments (Tr. 1732). I don't think it would entirely relieve us of payments for cars. I think from observing detention such an allowance would not relieve us of all of our expenses. We participate in some joint rates and receive divisions for our haul (Tr. 1733). On originated and delivered traffic we get a local rate which is not absorbed by the connection and is added to the junction point rate of the trunk line. On Exhibit 130, I arrived at per diem accruals on foreign lines by adding two days to the date of shipment, which is just a guess on my part. I added the two days because it is the free time allowed the shipper or consignee (Tr. 1734). In every case the per diem paid by the foreign line might have been more than that. We want four days' free time because we feel that we haven't enough money to pay car hire. If we had enough money we would have no objection to paying it (Tr. 1735). Some of our originated traffic comes from intermediate points of the railroad. Our average haul on originated and delivered traffic is about 14 miles. We had 9 cars of local traffic in 1925 (Tr. 1736), which includes the less-than-carload. We are willing to pay per diem on that traffic. Our present divisions have been [fol. 321] in effect since 1920. We participated in the 30% or 40% rate increase ordered by the Commission. The population of our territory is about 10,000 (Tr. 1737). We have four open stations and do some passenger business (Tr. 1738). On originated and delivered traffic we have an arbitrary which is added to the junction rate of the

trunk line. We are shown as a party to the joint through rate (Tr. 1739). Our division is in the form of an arbitrary allowance.

W. CLYDE SYKES was called as a witness and, being duly sworn, testified as follows:

I am Vice President of the Grasse River Railroad. We are on the so-called CS-59 basis prescribed by the Railroad Administration for industrial railroads, and we want to be let alone. It is a mutual agreement with the New York Central (Tr. 1740). We do not think the American Railway Association should come between us. We were in controversy with the New York Central for a long time in 1921 and 1922, and we pointed out to them that we were giving them a lot of outbound business and as we had to let the lumber companies take these cars back into the woods to load, it wasn't right for us to pay all the per diem and suggested that five days free time be allowed. They offered us the CS-59 basis and we accepted it (Tr. 1741). I have letters showing the negotiations.

(Said documents received in evidence as Exhibit No. 132.)

We think this basis is justified because most of our traffic is outbound. We haul cars in empty to get a load out and have to give shippers two days' free time and that puts too heavy a part of the car time on us. It would be unfair for us to pay car hire when all the New York Central has to do is to hook onto the loaded cars for a good line haul. If our mills were located on the New York Central (Tr. 1742) that road would have to serve the industries, place the empties and remove the loads from each mill. They would have the switching to do and that would take some time and allow two days' free time. All they do now is [fol. 322] to turn a load of empties over to us. We haul them over our 16 miles of track and turn them over to the mills. We gather up the loads and turn them back to them. We think two days' free time for the mills and one day for us to place and remove is little enough and if anything ought to be more. We get an arbitrary which makes our mills rates higher than the main line rates. Our allowance is not sufficient to compensate us for car hire if

we had to pay straight per diem. We get no divisions (Tr. 1743). We have not made any money (Tr. 1744). Our average loss per year since 1920 has been $6,402.86; our total deficit December 31, 1926 was $55,784.16 (Tr. 1744). Our road is 16 miles long and extends from Childwold, where it connects with the New York Central, to Cranberry Lake Village. It handles mail, express, passengers and freight. Our book investment is $290,886.41 (Tr. 1745).

Cross-examination:

The New York Central is our only connection. Our stock is owned by a good many individuals interested in the lumber companies which are its largest shippers. We have no through rates or divisions of any kind (Tr. 1746). All our rates are local and are not absorbed by the New York Central. We receive the entire amount of them. We own enough cars to take care of our local business and do not use any foreign cars in local shipments. I cannot say what we paid for car hire in 1925 (Tr. 1747). All of our traffic is line haul traffic. Shippers and receivers of freight on our road own 80% or 90% of the railroad stock. The principal shippers ship lumber and forest products. We were declared to be a common carrier by the Commission during Federal control (Tr. 1749). The population served by us is approximately 2,000 or 3,000, but there is a big summer population and in the summer months we handle a large amount of passenger traffic. Most of our revenue is derived from freight traffic. We own three locomotives, [fol. 323] twenty-four flat cars, ten box cars and some other equipment. We do not interchange our cars but some of them are adapted for interchange. We depend entirely on foreign line cars for handling interchange shipments. The lumber companies own some private cars, about 100 to 150 (Tr. 1750). Sometimes half our traffic is from companies having no interest in the railroad and at other times most of it is from companies that are interested. We have five or six lumber shippers but just one company owns about 80% of the stock (Tr. 1751). The road was originally built to haul the lumber. There might be enough business to keep us going even if the proprietary industry should stop operating (Tr. 1752). There is considerable tourist traffic on the railroad. We settle per diem on the basis prescribed in Appendix C of Circular C8-59

(Tr. 1753). During Federal control we received two days' free time. The short line contract signed by us with the Director General provided for that with per diem thereafter. Prior to Federal control we made no settlements (Tr. 1754). The New York Central collected demurrage from the shippers direct, although we handled the cars. We had very little inbound traffic. We file annual reports with the Commission (Tr. 1755). We get 6¢ a hundred pounds on lumber with a minimum of 36,000 pounds. We get about $30 a car which is in addition to the rate from the junction point. We perform no terminal switching within a designated switching district (Tr. 1756). We collect and retain our own demurrage (Tr. 1757).

W. H. Hough was called as a witness and, being duly sworn, testified as follows:

I am Secretary of the Dents Run Railroad Company. It was originally built to haul lumber, but the lumber is now gone (Tr. 1758). It is now owned by citizens of Williamsport, who are also interested in coal mines served by it. Its traffic is entirely coal.

(Answer of road to questionnaire sent out by American Short Line Railroad Association received in evidence as [fol. 324] Exhibit No. 133.)

The final valuation of the Commission is close to $125,000 (Tr. 1759). $25,000 would cover our additions and betterments since our valuation date (Tr. 1760). We have been told by the Pennsylvania that our railroad is not the kind that would be entitled to divisions. Taking our demurrage basis of car hire settlement such as we now have instead of a per diem basis, and since our present arrangement for two days' free time have worked satisfactorily, that the best thing for us to do would be to leave it alone. Our present arrangement for two days' free time has worked satisfactorily, and we would be satisfied to let it alone. Our principal traffic is coal. The Pennsylvania Railroad distributes coal cars for us and we are under the National Code of Demurrage Rules. Coal Mines are exempt from paying demurrage on cars held on mine sidings. Of course, if the miner should hold cars on their sidings for any

length of time, it would probably embarrass us tremendously, as our earnings are meager anyhow, but so far we have been able to get them to load and return cars with so much promptness that on the whole the two days' free time allowed us practically allows us to escape car hire on coal cars (Tr. 1761), but if the present investigation of the Commission should result in sustaining the American Railway Association in its apparent effort to break up special arrangements such as we have with the Pennsylvania Railroad and we should not have the division which we have been told by the Pennsylvania would be our right to claim the demurrage basis for ourselves anyhow, it would be quite disastrous and in all probability would put us out of business. We think that since the Pennsylvania gives cars to coal mines served by their own rails without charging per diem or demurrage, they ought to do the same for our mines, since those mines are just as much dependent upon the Pennsylvania for car supply as are the mines on its own rails. We feel that we ought to be protected in this respect, and if we are not, we will probably have to adopt a new set of demurrage rules toward [fol. 325] our shippers, whereby their free time will be cut down or cut out, or at least a demurrage rate charged against them sufficient to make us whole on what we have to pay the Pennsylvania. In that case, no doubt the mines would be at that much disadvantage as compared with the mines on the Pennsylvania's own rails, but it would probably be a choice between that or leasing their railroad facilities entirely (Tr. 1762).

Cross-examination:

Our stock is owned by people who own the stock in coal companies which formerly furnished all the traffic. All our traffic is coal outbound. We have no cars but own the one locomotive (Tr. 1763). We work under the National Demurrage Rules and collect no demurrage from coal mines. We take the cars from the Pennsylvania, put them on sidings, and only move them on order of the shipper (Tr. 1764). Four mines on the railroad are now operating. One mine, which has only worked three months in the last two years, owns 47% of the railroad stock; the balance is owned by the Dents Run Coal Company (Tr. 1765). The road is industrially owned, although the industries owning it are

not now operating. The Commission has recognized the road as a common carrier (Tr. 1766). We get a division of through rates on our coal amounting to 15¢ a ton. Our average haul is about six miles, and we have paid practically no car hire in the past. We have no local traffic. None of the mines now operating own stock in the railroad. It is the individuals who are owners of the mines who own the stock in the railroad (Tr. 1768). Our coal is billed out as fast as it is loaded. The Pennsylvania distributes cars to our mines under Car Distribution Rules the same as to their mines and allows us two days' free time (Tr. 1769). After two days it collects $2. a day for the first four days, in accordance with the demurrage rules, except that no demurrage is collected from us on cars held on mine sidings. On cars delivered by our company to the mine for loading [fol. 326] the Pennsylvania does not require us to pay any charges whatsoever, no matter how long they are held. The demurrage rules themselves exempt coal mines from the application of the demurrage rules (Tr. 1770). Our mine orders cars from our superintendent who gets the cars from the Pennsylvania. If the mine should hold a car for seven days and pay nothing in demurrage we would pay nothing in car hire (Tr. 1771). The two days' free time is not our maximum allowance as the Pennsylvania allows as free time all the time it takes us to move the cars over our railroad and hold it at the time. They make no charge whatsoever on cars received for coal loading. We have two stations, one at each end, and serve a population of about 200 (Tr. 1772). Almost all of our operating revenue is derived from freight. The only car hire arrangement we could work under would be the one we have now. The road has operated at a deficit for years, and we would like to have a larger division in addition to the free time (Tr. 1773).

Mr. Hitt: They only get 15¢ a ton out of a through rate, which is a ridiculously small amount, but we did not think we would go into the question of the division at this time.

The Witness: Our loads average about 50 tons per car (Tr. 1774).

DANIEL G. COHAN was called as a witness and, being duly sworn, testified as follows:

The Detroit Terminal Railroad operates in the cities of Detroit, Hamtramck, Highland Park and Spring Wells. It has 18 miles of first main line and 133 miles of service and business producing tracks. It serves 250 industries and connects directly with seven railroads and two other railroads through intermediate carriers. Its charges to and from connecting lines are $6.75 per car. On interterminal business our charges are $8.10 a car excepting sand, gravel, stone and slag, to which a tonnage rate is applied. In 1926 [fol. 327] it interchanged 531,009 cars, of which 308,308 were loaded. The larger industries served by it are the Ford Motor Company, Hudson Motor Company, Chrysler Motor Company, etc. (Tr. 1775). The road owns no equipment but does own 35 locomotives. It owns no freight cars interchanged with other railroads. Up to April, 1926, the Terminal received an arbitrary reclaim of $5 (Tr. 1776). In 1927 a check was made covering 98,536 cars and a reclaim of 3.89 days was established. The Terminal then withdrew from the American Railway Association, figuring that the reclaim allowed was not sufficient since the rates were not adequate to pay per diem in addition to furnishing the service. The check which was made was correct, we believe, but would not pay us a return. We think that because we furnished an exceptionally good service to our industries five days should be allowed because some of that money is used in operating expenses incurred to provide this service which reduces our car detention to 3.89 days per car the lowest average of any line in Detroit doing the same volume of business (Tr. 1777). The money I speak of accrues as a result of the five day reclaim. We know that reclaim is not supposed to produce a profit, but we feel that because of our service we are entitled to it. We have received bills for per diem from several of our connections who bill us in accordance with Rule 6 of the Per Diem Rule, but do not intend to pay them. We withdrew from the Association on June 10, 1927 (Tr. 1778). The check I spoke of was made by the American Railway Association under its rule. So far as I know the 3.89 days which it allowed was correct and represented the average detention of the cars checked. The check covered January, April, July and October, 1926

(Tr. 1779). The reclaim of 3.89 days means that we will lose $1.11 on every car or approximately $350,000 per year as compared with what we got under the five days reclaim. In 1926 we had 308,000 loaded cars on our rails for 1,453,468 days (1780). The five day reclaim has been in effect for [fol. 328] the last ten years. I have a copy of the A. R. A. statement concerning their check.

(Two *two* pages of said document received in evidence as Exhibits Numbers 134 and 135.) (Tr. 1781.)

Mr. Towner: The signature on the first page should be that of C. W. Crawford.

The Witness: Our $6.75 switching rate was fixed by the Commission and has been in effect for seven or eight years. While it was in effect we were getting a five day reclaim and we claim that it was fixed on the assumption that we could continue to get that reclaim. We receive no divisions of through rates on any traffic (Tr. 1782). Road haul carriers receive $7.00 a car for switching at Detroit. The Commission increased the switching charges at Detroit in the last few years, but we did not ask for any increase at that time. The Michigan Central asked for it first and after it was granted the balance of the lines applied for and received it. 95% of our traffic on which we get $6.75 a car is terminal switching (Tr. 1783). The balance is intermediate and interterminal switching. On intermediate switching we get $6.75 and on local switching $8.10. The charges on switching on road haul business are absorbed by the road haul carriers and that is 95% of our business; the city switching is paid for by shippers or consignees. Under the new reclaim, as compared with the old one, we will lose $1.11 per loaded car, but if we have to pay car hire under A. R. A. rules as a nonsubscriber, and the bills which have been presented to us, our withdrawing from the Association will not be a financial success (Tr. 1785). We do not figure that we are as well off as we would be if we got the five days—we are not going to be. In our withdrawing we are not paying any per diem. We are a little better off than we would be if we received the 3.89 days. We are not paying any per diem now, but if we paid without reclaim we would be worse off to the extent of $3.89 per car. But we have not planned on paying these bills. I do not know what

[fol. 329] reclaim the trunk lines receive at Detroit. I know some receive $5.00. Prior to 1926, practically all the lines received five days (Tr. 1786). They now have a little advantage of us on the switching charge. An increase of 25¢ a car in rate would not help us enough. Whether the Detroit Terminal is making any money, depends on whether they are making any money or not on the part the Interstate Commerce Commission say they are, but we don't believe we are. In 1926 our net railway operating income was $358,304.91 (Tr. 1787). Our book investment in 1926 was $4,767,011.99 and the Commission tentatively valued us as of 1918 at approximately $4,000,000. 1926 would be a representative year. We publish the National Demurrage Rules (Tr. 1788) and in 1926 we collected $157,253 in demurrage. In 1925 we collected $99,379. So far, for the first six months of 1927 our demurrage is only $30,000. The large figure in 1926 was due to conditions at two of our industries. The Hudson Motor Car Company and the Budd Manufacturing Co. In the early part of 1926, the production figures at both of these plants was so large that they were compelled to hold large quantities of materials in cars until they could construct buildings. These buildings were completed in the fall of 1926, but that was the reason for the large amount in that year. We retain the demurrage we collect (Tr. 1789). I do not know how the roads are going to handle the accounting since we have withdrawn from the Association; that is up to them. The five day reclaim would be acceptable to us, or if we had a large enough division of the rate it would be all right. Under our reclaim arrangement accounting expenses are very low. If we were given a division of the rate our expenses would be greatly increased because we would have to provide the same facilities that any trunk line carrier has (Tr. 1790). If our switching charge was large enough, it would take [fol. 330] care of it and we could then pay per diem and avoid this reclaiming from month to month. Making our reclaims does not cost us much. Our cost of policing demurrage is substantial (Tr. 1791), and so far this year what we collect has just about paid for the expense. Last year an exceptional year we made some money. It would mean a substantial expense to make us a party to tariffs and give us a division of the rate (Tr. 1792). It would mean that

we become the same as a road haul carrier and would handle bills of lading or freight bills and waybills as between different lines where we have none of that now. Our settlements are based upon interchange reports and the only bills delivered to us are the side carding on the cars with which we make our interchange—make settlement on that, which is very simple. If we were to participate in the earnings of the car, it would be necessary to establish a force such as the road carrier has, for the purpose of checking the rate and establishing our proportion of the earnings. I do not believe it would work out as well as our present arrangement on a switching basis with five days' reclaim. I know our expenses would be less under reclaim. The Detroit Terminal is owned by the New York Central and Canadian National. Each owns 50% of the stock (Tr. 1793). Any increase in our switching charges to enable us to pay per diem without reclaim would have to be pretty substantial (Tr. 1794). In 1925 we reclaimed five days each on 283,301 cars, and to get income that would permit us to pay per diem without reclaim, we would have had to have an increase in rate amounting to five times 283,301. In 1926 we paid $1,471,165.45 in per diem and collected $1,410,391 in reclaim. In 1925 we paid $1,347,364.85 in per diem and collected $1,479,805 in reclaim (Tr. 1795). I do not know as to the practicability of increasing switching charges so that we could pay per diem without reclaim; in order for us to come out whole we would have to increase up to the point that is being taken away from us if we have to pay per [fol. 331] diem. Up to now, reclaim has been the proper method and very practical (Tr. 1796). The detention figures that I gave included detention on many cars that are not considered in fixing reclaim. The figures I gave included all cars (Tr. 1797). In checking reclaim cars handled in inter- and intro-terminal service, cars containing company material and cars held over eight days are not included (Tr. 1798).

IRA S. SMITH was called as a witness and, being duly sworn, testified as follows:

I am General Manager of the Reynoldsville & Falls Creek Railroad, which operates 12.31 miles of first main track

and about six miles of yard track. We connect with the Pennsylvania at Reynoldsville, Pa., and with the Buffalo, Rochester & Pittsburgh at Falls Creek, Pa. (Tr. 1799). The railroad is a Class III road, owning two locomotives, one flat car and two cabooses. We depend on foreign lines for cars handled in interchange service. We serve a population of about 20,000 and have three stations, one an agency station (Tr. 1800). In 1926 we interchanged 1128 cars on which we paid per diem with the B. R. & P. and held those cars 3046 days. In 1925 we interchanged 2839 cars on which we paid per diem with the B. R. & P. and held them 2840 days (Tr. 1801). Most of our traffic is interchanged with the B. R. & P. We pay per diem to the B. R. & P. for the use of its cars and collect the standard demurrage rates from our shippers. Almost all of our traffic is coal (Tr. 1802). Our mines have been shut down for almost three years, so that our traffic is practically nothing. 95% of our traffic is coal originating on our line. The B. R. & P. rates the mines and furnishes the cars to us. We distribute them with our power. The mines notify us when they want cars and we assess demurrage against them when necessary (Tr. 1803). We have no demurrage tariff. Under our pres-[fol. 332] ent arrangement we pay no car hire to the Pennsylvania because we do the switching for them and they pay us for it, $4.50 per round trip. That is an operating arrangement under which we are the agent of the Pennsylvania for the purpose of reaching the industries (Tr. 1804). We have a contract under which the cars are presumed to remain in the possession of the Pennsylvania while we perform the work for it (Tr. 1805). All we get is the amount collected from the Pennsylvania which is not a tariff charge (Tr. 1806). The Pennsylvania hires us for handling the cars under a written contract (Tr. 1807). That is the only business we handle to and from the Pennsylvania. We do not have to pay any car hire on that. In 1896, the B. R. & P. said that if we would furnish yard facilities we would get our cars delivered to us with no charge (Tr. 1808). In 1921, that was abrogated and we were given three days' free time. We now receive that free time and pay per diem thereafter. That applies to coal cars. The coal mines do not hold the cars but get them out promptly. We have our tracks so arranged that we can haul our cars and push

them in behind the l tipples and they go out. Under our contract with the Pennsylvania, the Pennsylvania collects demurrage from industries on our rails (Tr. 1809). On our coal we get a division of the rate, but I do not know how much it is. We get a division of the rate on all traffic interchanged with the B. R. & P. Our arrangement with the Pennsylvania was in effect prior to 1919 (Tr. 1810). Since 1921, we have had three days' free time on cars from the B. R. & P. Our rates have been changed since then. We are not making any money. We make annual reports to the Commission (Tr. 1811). We keep a record showing the [fol. 333] number of days cars handled by the Pennsylvania are on our line (Tr. 1812). I do not know who owns the stock of the railroad (Tr. 1813), but it is not owned by the industries on it. Our last report to the Commission shows the stock ownership (Tr. 1814). The Commission has valued the railroad, but I do not know what the value is. 95% of our traffic is coal and the other 5% is merchandise and road material (Tr. 1815). We have a little merchandise in local traffic which is handled in foreign equipment. We do not ship any coal out over the Pennsylvania and have no per diem arrangement with it (Tr. 1816). Our only arrangement is with the B. R. & P. which allows us three days free with per diem thereafter. We receive a division of joint rates on coal. Our mines have been closed down for approximately three years now (Tr. 1817).

Examiner Rice: The next hearing is at Kansas City next Saturday, September 17th.

The hearing is adjourned.

Proceedings at Kansas City, Missouri, on September 17, 1927

Examiner Rice: The Commission has set for further hearing at this time and place Docket 17801, Rules for Car Hire Settlement between Railroads, and the various cases consolidated therewith.

A. M. JOHNSON was called as a witness and, being duly sworn, testified as follows:

I am Vice President and Traffic Manager of the Colorado & Southeastern Railroad and Vice President and Sales Manager of the Victor-American Fuel Company. We filed an answer to the questionnaire (Tr. 1829).

(Said document received in evidence as Exhibit No. 136).

I have prepared a blue print map of the railroad.

[fol. 334] (Said document received in evidence as Exhibit No. 137.)

The road extends from Delagua, Colorado to Barnes, Colorado, connecting with the Colorado & Southern at Ludlow and with the Denver & Rio Grande Western at Barnes. It also jointly uses the Colorado & Southern from Ludlow to Trinidad where it connects with the Santa Fe. It has three locomotives, 10 coal cars and operates about 25 miles. It serves only the mines of the Victor-American Fuel Company and handles practically nothing but coal (Tr. 1830). The railroad was built by the Fuel Company (Tr. 1831). About the only business now left on the road is outbound coal for railroad use. The Fuel Company would never have built the road if they had anticipated assessment of per diem. It would do us harm, because in recent years the purchasing agents of railroads will not pay a division of the rate to secure coal if they can get coal from their own rails, and result is that the fuel company has to reduce their mine price of coal to the amount of the freight division in order to compete with mines located on the Santa Fe or other roads where the freight division does not constitute a factor. So that it is easy to see that if the division were higher the fuel company would have to reduce their mine price on coal to the amount of whatever the division was, which would be selling coal at under cost of production. An increase in divisions would ruin the railroad just the same as straight per diem or any charge over the present assessment would (Tr. 1832). On car hire we now get four days reclaim from the Santa Fe and three days reclaim from the Colorado and Southern and D. & R. G. W. I have prepared a statement of comparative car hire costs.

(Said document received in evidence as Exhibit No. 138.)

The road operates as a common carrier, although we serve only the industry which owns it because it serves three con-

nections (Tr. 1833). It is important that all three connections have access to our mines. The function of the rail-
[fol. 335] road is really that of a joint facility over which the connections get their fuel coal from the Fuel Company as well as other railroads which they connect with directly and we do not. If it was not necessary to have a connection with the three roads, we would just as soon have the connections serve the Fuel Company, although as a practical matter it would be impossible for thfee different connections to be working in on its tracks at the same time, and it would not only make great confusion and be dangerous but it would be vastly more expensive for each of them. The railroad gets a division of 15¢ a ton, which is less than either connection would have to pay if it performed the service (Tr. 1834). I do not think the railroad should pay any per diem since it and the mines are practically one and are entitled to the same basis of car hire as applies to any other coal mine. Under the present national code of demurrage rules no demurrage is charged against coal mines for cars held on mine sidings or at the coal mine and we want to be treated in exactly the same way. The railroad is nothing more or less than mine sidings for the Fuel Company. The present arrangement is not entirely satisfactory; it ought to be revised some, but I do not think it is good practice to give absolutely unlimited free time without any check. We are willing to be put under penalty for the prompt handling of cars after expiration of a reasonable amount of free time (Tr. 1835). We think that free time ought to be adjusted to take care of a normal situation. We had a $4,177.33 deficit in 1926 after charging interest, taxes and joint facility rentals. I have prepared a report of revenue and expenses.

(Said document received in evidence as Exhibit No. 139.)

If we had paid straight per diem in 1926, our deficit would have been about $26,000; the showing for 1926 is representative of the last several years (Tr. 1836). After
[fol. 336] allowing a reasonable reclaim, I think there should be some restriction as to the length of time cars can be held on the short line; this to be worked out by the connecting lines and the short line. Our present free time does not always let us out. To get out as nearly whole as we do on per diem, we frequently have to increase our operat-

ing expense (Tr. 1837). Frequently things happen that increase our operating expense not related to per diem but an element of cost (Tr. 1838). So far as I know our connections are satisfied with the present arrangement.

Cross-examination:

We have about 14 miles of joint operation, 11 miles of main track and 5 miles of sidings. We pay a track rental on the joint track to the Colorado & Southern (Tr. 1839). I see a distinction between paying the Colorado & Southern for the track and paying it for cars. We have 3 locomotives and 10 coal cars (Tr. 1840). Our cars are not interchanged with trunk lines and are used in local traffic. We get a division of 15¢ of joint rates on all interline traffic. Our local traffic rate is something like 40¢ a ton (Tr. 1841). We have always handled local traffic in our own equipment. Our orders for equipment go through our railroad to the three lines (Tr. 1842). I said that the railroad and the mines were practically one and entitled to exactly the same basis of car hire as applied to any other coal mine on the lines of the connecting carriers. When our connecting lines deal with the railroad they are dealing with the mine. I don't know that I would be satisfied if our railroad was considered as part of the industry owning it. That is a pretty broad question. A lot of shippers are not treated very well by some railroads; with respect to the furnishing of cars and equipment, that too is pretty broad; the [fol. 337] railroad was built because the Santa Fe (Tr. 1843) wanted us to build our railroad, and manifestly the railroad couldn't live if it didn't get something for the service. We don't care to make money on our railroad. We would be satisfied to come out whole at the end of the year. I don't think the Commission wants to put our railroad out of business (Tr. 1844). We get more free time from our connections than they allow to any shipper (Tr. 1845). We should get more time because of the time we consume in operation. It is practically 18 miles from the mines to Trinidad to go after those Santa Fe cars; with delays you get on the joint track there, by the time you go to Trinidad and return your train crew has used nearly all day. Mines on the trunk lines don't pay demurrage on cars held unbilled on mine sidings (Tr. 1846). I would be

satisfied if our railroad was considered as an industry to be treated with respect to coal as the connecting lines treat other mines, provided we did not have to pay any per diem. If we were treated as being a part of the mine sidings, we would have no per diem (Tr. 1847), which would be more favorable to us than the present arrangement of limited free time. But I think a penalty necessary after a reasonable length of time so as to prevent undue detention. We would still want to receive our 15¢ a ton division. The Fuel Company makes a price to the Santa Fe Railroad 15¢ less than the Santa Fe pays our competing mine on its own tracks (Tr. 1848); thus the Fuel Company has to reduce its price in the amount of that division. The Fuel Company has to make the same delivered price as its competitor on the Santa Fe so that if the division of the railroad was increased the Fuel Company would have to reduce its mine price accordingly (Tr. 1849). I consider that the increased division would put the railroad out of business, because I consider the railroad and the mine as one company. [fol. 338] I have refused to accept increased divisions when offered. If the railroad was independently owned, an increase in the divisions would be a fair solution of the problem for the railroad (Tr. 1850). The railroad serves no industries except the Fuel Company mines. I don't know whether or not the railroad has been held to be a common carrier, but I think it has (Tr. 1851). If our track was considered as a plant facility, we would lose our connection with the Santa Fe, and that would put the railroad out of business. In 1926, as shown in Exhibit 138, we paid $79 in car hire (Tr. 1852). The detention figures in that exhibit are all estimated (Tr. 1853). The detention might be figured out by using the figures showing the increased car hire cost on straight per diem. The railroad pays straight per diem after the expiration of free time. I do not know the basis of computing the detention shown in Exhibit 138. We handled a total of 7534 cars on the road in 1926 (Tr. 1855). Some might have been loaded both ways (Tr. 1856). Exhibit 138 shows that we held 7534 cars a total of 21,916 per diem days (Tr. 1857). The figure does not exclude Sundays and holidays; it includes every day (Tr. 1858). The railroad does not carry many surplus cars at the mines, as we wish to avoid per diem (Tr. 1860). There ought to be a penalty against a railroad for

holding cars after a reasonable time. You can't very well penalize a mine company because we find a lot of times railroads shove cars into mines to force loading. I could get along with the free time that we now have, but if I had another day I would not have had to pay the $79 I did pay (Tr. 1861). I do not think that more free time would decrease efficiency. Most of the coal sold by the mines is outbound coal which is only loaded on order and goes out immediately. We have no unbilled coal (Tr. 1862). Our three connecting lines assign cars to our mines. the railroad performs no switching service and receives its compensation as a division as for a line haul service. The road retains the demurrage it collects (Tr. 1863). We would be willing to [fol. 339] turn demurrage collected from the Fuel Company over to connecting lines. It takes about a day to haul cars from Trinidad to the mine (Tr. 1864). We only run trains according to the orders, and the mines have only been working about three days a week. There are some grades and some delay meeting trains, so that it takes considerable time to take a train to Trinidad and back (Tr. 1865). It is about 7 miles from the mine to the D. & R. G. W. We have no passenger business and handle no freight for anybody except the Fuel Company which also operates a store itself (Tr. 1866). We are willing to haul freight for anybody (Tr. 1867). Bad weather sometimes interferes with our operation, heavy rains in summer and snows in winter. Most of the coal produced by the mine is for railroad use (Tr. 1868). When the Fuel Company gets an order for railroad coal, the connecting carrier sets in enough cars to take care of its order. Our railroad hauls the cars to the mine, fills them up and takes them back. The car supply the railroad receives from the connecting carriers is sufficient to take care of those roads' requirements. Our present reclaim has been in effect since 1921, I think. I don't know that we have ever paid any per diem (Tr. 1869). The questionnaire is in error if it says we paid per diem after 1921.

A. T. YOUNG was called as a witness and, being duly sworn, testified as follows (Tr. 1870):

I am Vice President and General Manager of the San Luis Central Railroad. I have a blue-print map of the railroad.

(Said document received in evidence as Exhibit No. 140.)

The road is standard gauge with 12.21 miles of main line extending from a junction with the D. & R. G. W. (Tr. 1871), north to the town of Center, Colorado. It has only the one connection. Most of the tonnage is merchandise, coal and agriculture products (Tr. 1872). The road was built in 1913 by a sugar factory to haul beets. In 1916 the factory was shut down and sold but the operation of the railroad was continued as an independent enterprise. [fol. 340] About 1100 cars were shipped out in 1914 and about 3750 cars in 1926 (Tr. 1873). The road is independent and not affiliated with any industry served. The company owns one car, which is sufficient to handle the less carload merchandise shipments between Monte Vista and Center, one locomotive, and one combination way and passenger car. Outside of the local traffic, all shipments are handled in foreign cars. Up to July 1, 1925, the company paid per diem without reclaim or free time (Tr. 1874), except that the per diem did not begin until the empty car was taken off the interchange track. This was because the interchange track was used for storage by the D. & R. G. W. During the heavy movement of potatoes in September and October, it frequently occurred that we would take cars off the interchange track, place for loading, shippers would load and we would return the cars within less than 24 hours, and on such movements no per diem would accrue and this company would not be charged for the use of the car. The service over this line of the D. & R. G. W. is decreased as tonnage decreases, and by March 15th its freight service is on a semi-weekly basis. Empties are brought out on Mondays and Fridays and put on the transfer track (Tr. 1875). We take the cars from the transfer track the same day and place them for loading on our line. At that season, the potatoes come from storage and have to be sorted, so it takes a shipper a full 48 hours free time allowance to finish loading the car. The D. & R. G. W. freight train returns on Tuesdays and Saturdays, picking up the loads. The D. & R. G. W. will not accept perishable shipments except on days when the eastbound train is operated. So

that on our per diem cars we have to pay the per diem charge for the full time the car was in our possession, even though we were not allowed to make delivery when we were able to do so. To summarize, on per diem cars delivered to us on Friday, we place for loading the same day; shipper has 48 hours to load from following 7 A. M. Sunday being free, shipper has until Monday night to finish loading, and [fol. 641] we could not make delivery until Tuesday night. On cars delivered to us Monday, shipper has until following Wednesday P. M. to load, but we have to pay per diem on such cars from Monday until Saturday when the next east bound D. &. R. G. W. train goes through. On October 1, 1925 refrigerator cars were put on a mileage basis which overcame the two difficulties referred to (Tr. 1876). Our outbound traffic is 96% of the total and most of it is potatoes which are handled in refrigerator cars on a mileage basis. In 1926 we paid $1145 to the American Refrigerator Transit Company on refrigerator cars, $21.94 on tank cars and $1513 to the D. & R. G. W. for car hire on per diem cars. On straight per diem our approximate bill would have been $7,016.24 (Tr. 1877). We apply the National Demurrage Rules to our shippers. We have no complaint with our present car hire arrangement but suggest the continuance of individual agreements to take care of local conditions and the clear unfairness of the application of a uniform per diem rule to a railroad operating under the local conditions which we do. Land values and traffic have increased a great deal since this road was built. Abandonment of the line would decrease land values, reduce intensive cultivation, and the territory served would revert to a livestock, grain and hay district requiring few people to handle it (Tr. 1878). If our operating costs were increased through car hire we would have to cease operation (Tr. 1879). I have an exhibit which shows the reduction in car hire from $1.87 per car to 7½ cents when refrigerator cars were put on a mileage basis.

(Said document received in evidence as Exhibit No. 141.)

The mileage basis for all cars is the right basis for us. We do not now insist upon extending it to anything but the refrigerator cars, but we want the D. & R. G. W. left free to agree with us on whatever is fair, and we look with

alarm upon the interference of the American Railway Association (Tr. 1880).

[fol. 342] Cross-examination:

We get a division of joint rates on our potatoes and vegetables and live stock which is 83½% of our traffic. On the balance of the traffic we add our local rate to the D. & R. G. W. rate (Tr. 1881). All our service is line haul. Up to October 1, 1925, we paid straight per diem to the D. & R. G. W. on all cars, except on tank cars on which we paid mileage to the owners. All our traffic is inter-line (Tr. 1882). Until October 1, 1925, we paid per diem on refrigerator cars of the A. R. T. Company through the D. & R. G. W. but on that date they were put on a mileage basis and we settled direct with the A. R. T. Company (Tr. 1883). Under our present situation, we are paying mileage on privately owned tank and refrigerator cars and straight per diem on other cars, which is satisfactory to us. Our only complaint is that the D. & R. G. W. will not interchange freight with us except on the day its train goes through (Tr. 1884). With that exception we are satisfied. I did not know that the per diem rules contemplated the payment of mileage and not per diem on private cars. We always paid per diem. (Tr. 1885). The road is not a subscriber to the Car Service & Per Diem Agreement, and I have not studied the agreement.

Mr. Hitt: As far as I know I think it is correct that the payment of mileage on privately owned refrigerator and tank cars and per diem on other equipment is in accordance with the per diem rules (Tr. 1886).

The Witness: My statement of the increase that would be produced in our per diem payments on straight per diem was upon the assumption that we would have to pay $1 a day for every car including the refrigerators but excepting tank cars (Tr. 1887). When I said that an arbitrary car hire rule would increase our operating cost and would force us to cease operating, I had in mind the payment of $1 a day for all cars, regardless of character and ownership [fol. 343] would be too much money for us to pay. Theoretically, an increase in our income by increasing our local rates and our divisions would take care of that higher ex-

pense, but the protest of our 400 farmers would prevent allowance by the Public Utilities Commission of an increase in the local rate. They would have to pay it, however, if the increase went into effect. When we decreased our car hire cost in October, 1925, we took up the reduction in cost by a reduction of revenue because we joined in through rates and accepted a division less than our local rate (Tr. 1889). In 1925 our decrease in per diem paid was due to the installation of the mileage basis. I said that I thought the proper basis for car hire was mileage, but that I am satisfied to pay per diem on per diem cars now (Tr. 1890). That is because we only use a few of them, but I think a mileage basis would be proper on them for both parties. I do not recommend the abandonment of the present per diem basis and the installation of a mileage system all over the country. I think a uniform system of car hire is hard to apply throughout the United States (Tr. 1891). I think the arrangement should depend on local conditions. I understand that the A. R. A. was behind this effort to have a uniform rule applied throughout the country (Tr. 1892). On inbound traffic our interchange with the D. & R. G. W. is when they place the car on the track. We pick it up the same day. On outbound traffic the interchange at this time of year is on the day we deliver it to the D. & R. G. W. Beginning in February or March they cut their service down and from that time on they accept the outbound shipments on the two days a week they run eastbound trains (Tr. 1895). The semi-weekly service runs from about February or March to the middle of August. Our potatoes constitute 83½% of our traffic and are all shipped in refrigerator cars (Tr. 1896). When we paid per diem on refrigerators we used practically all A. R. T. cars. We have always settled direct with the owners on a mileage basis for tank cars at 1½ cents a mile. We publish the National Demurrage Rules (Tr. 1897). We incur some expense in cleaning refrigerator cars for loading; it costs us about 37¢ a car. The D. & R. G. W. does [fol. 344] the work and charges us the amount (Tr. 1898). About 83% of the cars we use are refrigerator cars. We have practically no local traffic and only one locomotive. In Exhibit 141 net revenue means revenue available for interest, taxes and trackage facilities, before we take out

per diem (Tr. 1899) and taxes. It is the net operating revenue (Tr. 1900).

J. M. BRAMLETTE was called as a witness and, being duly sworn, testified as follows:

I am Manager of the Omaha, Lincoln & Beatrice Railway Company. I have prepared a map of the property.

(Said document received in evidence as Exhibit No. 142.) (Tr. 1900.)

The railroad is an electric line, operating entirely within the city limits of Lincoln, Nebraska. It operates 5.97 miles, is a common carrier and furnishes both passenger and freight transportation. It has a physical connection only with the Missouri Pacific (Tr. 1901). The road originates no carload traffic, and its entire carload freight business is tonnage from connecting lines. We handled 551 inbound carloads in 1926, on which we received revenue of $3195. We publish a switching tariff which contains our charges of $6.00, $5.50, $5.00 per car.

(Said document received in evidence as Exhibit No. 143.)

Our switching charges are absorbed by connecting lines. We pay car hire under an average demurrage agreement on per diem and mileage cars and extend the regular demurrage agreement to consignees. In 1926 we collected $28.00 in demurrage from consignees and paid $32.00 in car hire to the Missouri Pacific. On straight per diem we would have paid $1102.00 or 35% of our gross freight revenue. This we could not afford to do. In fact the present switching rates are non-compensatory and we are about to seek an increase thereof, as in most cases is requires two round trips for each car handled. The road is not owned or controlled by any interest furnishing any of its tonnage (Tr. 1903). We have one electric freight locomotive and seven steel cars for passenger transportation. Our gross revenue in 1926 was $45,025.00 and more than $40,000. of it was passenger revenue. All our traffic is inbound switching business and the line is entirely within the switching

district of Lincoln. We do not wish to become a subscriber to the Car Service & Per Diem Rules because we would [fol. 345] have to make petty settlements with car owners all over the country and then reclaim on the Missouri Pacific, which would increase our expenses. In order to do this we would have to hire another man to take care of car records and his salary would eat up our gross revenue from freight operations which in 1926 was $3195.00. We now make settlements only with the Missouri Pacific (Tr. 1904). It would be a great burden for us to make settlements with car owners direct.

Cross-examination:

Our company operates primarily a street railroad. Some, a very small portion, of the right of way is in the public streets (Tr. 1905). Our street car fares are regulated by the Railroad Commission of Nebraska. Our main objection to the A. R. A. rules is the expense of keeping the records; our business wouldn't justify the expense. We have never made a net dollar (Tr. 1906). I don't know anything about the A. R. A. per diem rules, but I have talked with quite a few railroad men about them and they don't seem to understand them and they seem to be very complicated. Our railroad is a common carrier (Tr. 1907), and we want to continue under our present condition. I object to paying car hire, however, as it increases the operating expense and business does not justify it (Tr. 1908). I have not gone so far as to ask people to give us our supplies for nothing. We file annual reports with the Interstate Commerce Commission. We get all our coal in trucks and generate no power (Tr. 1909). We apply the National Demurrage Rules and the Missouri Pacific allows us the same free time and the average agreement. Most of the industries return the cars within 48 hours as is evidenced by the fact that we paid only $32.00 demurrage to the Missouri Pacific in 1926. We have had our present arrangement with the Misouri Pacific about 20 years (Tr. 1910). Until recently the Missouri Pacific collected demurrage from our consignees direct. We publish the National Demurrage Rules, and I think within the last two or three months we have collected demurrage and passed it on to the Missouri Pacific (Tr. 1911). In 1926 we paid the Missouri Pacific $4.00 more in

demurrage than we collected from consignees. That differ- [fol. 346] ence was due to the fact that we were not able to collect that $4.00 demurrage due (Tr. 1912). We do all of our switching at night; we do everything we can to avoid demurrage charges and to best serve the community. (Tr. 1913). I think the Missouri Pacific collected demurrage on our switching at night; we do everything we can to avoid demurrage rules in the fall or winter of 1925 (Tr. 1914).

WARD WIRE (representing the Colorado & Wyoming Railroad) was called as a witness and, being duly sworn, tesitfied as follows (Tr. 1915):

I am here in response to the request of the Commission. We just found out that we are not a subscriber to the per diem and reclaim rules. We have been a member of the American Railway Association for many years and are a Class 1 railroad, reporting to the Interstate Commerce Commission (Tr. 1916). We applied for subscription to the per diem rules but neglected to fill out and return one of the blanks. It is our desire to abide by all the rules and regulations of the A. R. A. In 1913 our reclaim was determined under the Denver rule (Tr. 1917) which applies on terminal switching in Denver and is contemplated by the A. R. A. Rules. This rule is that if your average detention is less than five days in any one month, you will be accorded an individual reclaim on individual cars of 8 days on single loads—in empty and out loaded or the reverse —or a maximum of 10 days on cars loaded in and out. From 1922 to 1926 our detention has ranged from 3.40 days to 4 days, and our annual traffic from 47,000 cars to over 75,000 cars. The incentive under the Denver plan is to keep average detention under 5 days so when you are in special trouble on individual cars you get the additional amount, (Tr. 1918). We interchange with the Santa Fe, Colorado & Southern, and D. & R. G. W. at Minnequa. Our railroad is 77 miles long (Tr. 1919), which includes everything. We are a terminal switching road and all our operations are within the switching district. We have 26 locomotives and 540 freight cars. Our average length of haul [fol. 347] is two or three miles (Tr. 1920). Most of our

traffic is inbound. Our road is owned by the Colorado Fuel & Iron Company which owns all the capital stock. 90 odd per cent of our traffic is for the proprietary industry (Tr. 1921). Our own freight cars do not go off our railroad and for interchange traffic we use foreign line cars. The Colorado & Wyoming is made up of three divisions, one in Wyoming, one in Southern Colorado and one at Minnequa. We have ore mines on the Northern Division and coal mines and coke ovens on the Southern Division. Under our present car hire arrangement with our connections, if our average detention is less than five days we are allowed reclaim on individual cars up to eight days on single loads and ten days on double loads, with straight per diem thereafter (Tr. 1922). We are allowed reclaim up to eight days on cars loaded one way and ten days on cars loaded both ways, provided our average reclaim does not exceed five days per car (Tr. 1923). We pay per diem to our connection for excess detention. We settle with the connection from which we receive the car and to which we return it. This arrangement has been in force since 1913 (Tr. 1924). We paid no per diem or demurrage before that. We apply the National Demurrage Rules against our shippers and consignees, and are an associate member of the A. R. A. (Tr. 1925).

Cross-examination:

The so-called "Denver Plan" is a result of a local agreement among all the roads at Denver and will continue in effect if our road becomes a subscriber. In 1926 we paid $15,650 per diem (Tr. 1926), as we have many cars that come in empty and go out empty and on which we pay per diem without reclaim. These are cars that are ordered for loading but for some reason are not loaded. This increases our per diem payments (Tr. 1927). There is also some detention beyond the free time which adds to the amount paid. Some cars may be loaded in and out (Tr. 1928) but each load is counted as one car. Our per diem payments for 1923 to 1926 have run between $4462 and $15,650. We make no money and in 1926 had a $12,000 deficit after all deduc- [fol. 348] tions: there has been a deficit for many years previous (Tr. 1929). We believe we will become a subscriber to per diem and reclaim and our present arrangement will be continued. We made our application in 1913 but neg-

lected to return a blank which was sent us (Tr. 1930). The A. R. A. acted favorably upon our application but we neglected to follow it up. Our connecting lines approved our application (Tr. 1931).

C. H. GRUNDY was called as a witness and, being duly sworn, testified as follows:

I am Vice-President of the Marinette, Tomahawk & Western Railroad. I have prepared a map of that railroad.

(Said document received in evidence as Exhibit No. 144).

We operate out of Tomahawk, Wisconsin, in three directions, 6 miles, to a connection with the Soo Line at Bradley (Tr. 1932), 14 miles, to a connection with the North Western at Harrison and 14 miles to Spirit Falls, a stub-end, and we connect with the Milwaukee at Tomahawk. Our main line mileage is about 37 miles. We serve several pulp mills, two saw mills and other industries. No industry or shipper on the railroad is connected with the railroad. We operate no passenger service (Tr. 1933). Our local traffic is about 10% of our interline traffic. I read Mr. Seward's testimony on our railroad and wish to corroborate his statement (Tr. 1934).

As I have stated, we operate out of Tomahawk in three directions. For example, we will order empty cars from the North Western at Harrison to be loaded at Spirit Falls and bring those empties to Tomahawk on our train. The following day we take them to Spirit Falls, where the shippers are allowed two days free time for loading under our demurrage agreement with them, as specified in the national car storage and demurrage rules. After they are loaded the cars are returned to Tomahawk and the next day delivered to the North Western at Harrison. This is because we do not run through train between Harrison and Spirit Falls. Operating conditions such as connections with North Western make direct through service between Harrison and Spirit Falls impossible. We cannot run on sched-
[fol. 349] ule, because we do all the switching at various sidings between Harrison and Tomahawk and between Tomahawk and Spirit Falls, and with the delays caused by such

switching we simply could not make the run and make connections with other carriers.

Substantially the same conditions of operation and car detention would apply to cars received from the Soo Line at Bradley.

In the illustration given above on traffic between Harrison and Spirit Falls per diem average as follows: Usually one day to Tomahawk, one day to Spirit Falls, two days for loading at Spirit Falls, one day in return to Tomahawk, and one day in transit from Tomahawk to Harrison, making a minimum per diem accrual of $5, where the shipper at Spirit Falls uses his whole demurrage free time. Should he load in one day the per diem would be $4.00.

Sometimes, under favorable loading conditions, we are able to reduce this per diem accrual to $3.00.

This car detention applies for good weather, but of course would be greater during the heavy snows and storms during the Winter season. Sundays and holidays also increase our per diem charge, as shippers can and frequently do use these extra days free time.

Furthermore, the collection of demurrage from our shippers is made less because we extend the average agreement to them. I should say that we do not collect in demurrage more than 10 to 15 per cent.

We do not run through trains through Tomahawk because of operating conditions (Tr. 1935). This makes our minimum per diem accruals $5.00 when a shipper uses all his free time. Sometimes we can reduce it to $4.00. In 1925 we paid $22,831 in car hire and collected $2,592 in demurrage. In 1926 we paid $16,038 in car hire and collected $2,427 in demurrage (Tr. 1936). For 20 years prior to Federal control our only car hire arrangement was to collect demurrage from shippers and turn it over to our connections. At the end of Federal control we had to pay a per diem bill of $30,000 to the Director General, but in 1920 our connections restored the *the* old basis of car hire, [fol. 350] we acting as agents for them in collecting demurrage, (Tr. 1937). In 1921 agreements were submitted to us for the Soo Line and Milwaukee.

(Said document received in evidence as Exhibit No. 145.)

Under these agreements we were to be allowed four days' free time on a one way loading movement and six days on a load in both directions, with a payment of $1 per car per day thereafter (Tr. 1938). This arrangement was not put in effect because our connections withdrew the offer under Rule 6-B of the Per Diem Rules Agreement, saying that they had to obey and rule. I was told by the North Western that it was denied permission by the A. R. A. to put in our old arrangement, so that we have been on straight per diem since August 15, 1922 (Tr. 1939). In 1921 we paid no car hire. Since 1922 we have paid car hire bills each year ranging from $16,138.12 to $30,223.67, a total of $100.-649.38. This gave our three connections about 20% of our revenues, and this increase in operating cost was not offset by increases in our revenues (Tr. 1940). We also complain that we do not get reclaim for some switching that we perform, because we are not subscribers to the Per Diem Rules Agreement. We feel that the footnote to Rule 5, which bars a non-subscriber from such reclaim is extremely discriminatory and prejudicial. In other words, we are barred from switching reclaim by Rule 5 and from free time on line haul traffic by Rule 6. We think we are entitled to receive that reclaim. We own 51 cars which are not interchanged and are ample for our local service needs.

Cross-examination:

We could cut our per diem substantially if we operated through trains from Spirit Falls to Harrison, but it cannot be done (Tr. 1941). We cannot do it because we would have to establish a round house and shops, men to inspect, etc., and it would not be operating economy, and unless we put on more locomotives and train crews, it wouldn't be an operating possibility on a road such as we have laid out there. I do not look on it as asking our connections to assume our operating disability to take care of this situation. [fol. 351] If they furnish us an empty car to load with freight for their own road, it is to our mutual benefit. The question is what proportion each should pay for it (Tr. 1942). If the North Western gives us a car belonging to another railroad, we have to pay $1 a day and so does the North Western, but our service, the terminal end, the

furnishing of the freight is far more expensive than the straight line haul; the originating and switching at the terminals, such as paper mills, where there are three mills grouped and you will spend a whole half-day in switching there. I am suggesting a waiver of per diem because that was the agreement previously voluntarily offered us. If they could make those agreements then, why not now (Tr. 1943). We think we are entitled to receive more money for our service (a terminal always receives a certain amount more), and if the North Western gives a shipper 48 hours free they should give it to us. We are interested in getting enough money to help pay our expenses (Tr. 1944). I think it is very wrong for the main line to make all kinds of special arrangements with other roads and charge us straight per diem, and if they charged all roads straight per diem that wouldn't make it just. The North Western agreed that as a terminal line, producing so much and doing so much switching, that we were entitled to some consideration in the use of cars. I pick out car hire because it is one item in the transaction of all other business (Tr. 1945). If our divisions were increased enough to pay our car hire we would be satisfied. I think we should pay a proportion of foreign line car hire upon an agreed basis, but I have nothing specific to recommend (Tr. 1946). My idea is that we should be free to trade with our connections and see what we can fix up. I consider it improper to refuse to give us a reclaim on switching (Tr. 1947). We have a small amount of that service. We could get reclaim by joining the Association but that would cost us too much. We decided not to join because the accounting expense would cost more than the reclaim would be worth (Tr. [fol. 352] 1948). Railway at Mansfield, Missouri. We serve a number of industries at Ava, Missouri; the nearest other rail transportation South of Ava is the Missouri Pacific, 65 miles away. The territory dependent upon the railroad has a population of 20,000. There are about 150 small tomato canning factories within 20 miles of Ava. The road was built by private companies with aid of a bonus from citizens of Ava, but in 1922 it suspended operation and the citizens bought it up (Tr. 1958). Our traffic is not well balanced; inbound and outbound move at different times. I have prepared a statement of the consist of our tonnage for 1925 and 1926.

(Said document received in evidence as Exhibit No. 148.)

In 1925 we handled 667 carloads, of which 337 were inbound and 330 outbound; in 1926 we handled 542 carloads, 378 inbound, and 164 outbound. I have also prepared an exhibit of revenues and expenses for the same years.

(Said document received in evidence as Exhibit No. 149.) (Tr. 1959.)

In 1925 our gross carload freight revenue was $21,119.79 of which we paid out $2,586 in per diem. In 1926 our carload freight revenue was $25,646.25 of which we paid $2,567 in per diem. I have prepared a statement showing the per diem paid the Frisco in the same years.

(Said document received in evidence as Exhibit No. 150.)

All our revenue comes from local charges over and above the Frisco rates to and from Mansfield, covered by our local tariff, which I have here.

(Said document received in evidence as Exhibit No. 151.)

The tariff is filed with the Public Service Commission of Missouri and our rates are necessarily high, otherwise the road could not exist. The citizens of Ava keep the road alive by paying excessive but necessary rates and as they have to bear the burden in the long-run, this is the easiest way. Our less-than-carload freight is transferred at the junction and handled in our own cars (Tr. 1961). I can best describe how our freight operation affects our per diem and demurrage by illustrations. On two representative cars we incurred per diem charges of 5 days and 6 days and collected no demurrage. We are not satisfied with the per diem system. We see no reason why the Frisco should allow its industries two days free. The [fol. 353] A. R. A. told us that they did not think it would pay us to do it. Most of our traffic moves under a division of through rates. All of our interline traffic moves under divisions of joint through rates (Tr. 1950). Our stations take the same rate as the rate to the junctions on interline freight.

(Answer to question-aire received in evidence as Exhibit No. 146.)

The exhibit is in error in saying that we are a member of the A. R. A., and we subscribe to the Per Diem Rules (Tr. 1950). Our railroad serves about 3500 people (Tr. 1951). We would like to be able to negotiate our own car hire arrangement with connecting lines. I would take a chance that we could do that. I personally would rather be on the same basis as shippers with two days' free time and Sundays and holidays eliminated with demurrage thereafter (Tr. 1952). I am not in favor of demurrage as applied against the road. I want two days' free time with per diem thereafter and Sundays and holidays eliminated. We want the trunk lines to allow us the same free time we allow shippers (Tr. 1953) and after that we would pay $1 a day. I had in mind that we would like to be permitted to make any arrangement we please. In 1925 we collected $2,592 in demurrage and in 1926 $2427. In 1925 we interchanged 5621 cars (Tr. 1954). The per diem accruals in that year were $22,831 with an average detention per car of 4.06 days. We have no passenger business (Tr. 1955).

J. A. MITCHELL was called as a witness and, being duly sworn, testified as follows:

I am Secretary of the Ozark Southern Railway. We settle per diem with direct connections at the per diem rate without reclaim or free time, except that our time is computed from 7 A. M. after the car is set (Tr. 1956). I have prepared a map of the railroad.

(Said document received in evidence as Exhibit No. 147.)

Our railroad is located in the heart of the Ozarks, and is the only one in a considerable territory providing outlet to the outside world. We have very heavy grades and some very heavy curves. We operate 14.7 miles and connect with [fol. 354] the Frisco *time* for loading and unloading and perform terminal service and then expect us to pay straight per diem, when it simply sets the cars on the interchange and we do all the work of terminal service, assembling and delivery without a cent of cost to them of any kind. It receives more net revenue on our traffic interchangd with our road than on traffic delivered to its patrons. Our rail-

road is a feeder to the Frisco (Tr. 1962). If this railroad was abandoned the Frisco would not get this traffic and it would destroy 150 canning factories and the cross-tie industries in the territory and lower land values to the extent of $1,250,000 and leave the county seat without rail transportation. It would very substantially impair business and kill much of it. We think the Frisco should give us cars free, since we gather up traffic for it, or at least allow us enough free time to handle them with reasonable diligence. Our average detention is about 4 days and we should have 4 days' free time. In any event, we would like to make our own agreement with the Frisco on whatever we might find fair (Tr. 1963).

Cross-examination:

The tank cars we use are not settled on the $1 a day basis (Tr. 1964). In 1926 we made a profit of $10,000 on a capitalization of $150,000. When we bought the road we made a mortgage for $50,000, on which we pay 6% (Tr. 1965). After that was paid the rest was profit. The earnings have been put into betterments and equipment. All the officers serve without pay (Tr. 1966). I don't think our car hire is a legitimate expense of operation since our road is short; we get only pay for a short haul and the Frisco gets pay for the long haul on the stuff we gather up. We don't look at it as a fair proposition for them to get a long haul and the big rate and we pay for the cars and gather it up. I don't know what dividend the Frisco earned on its capital stock in 1926 (Tr. 1967). We have reduced all other operating expense to the minimum and we feel that since the Frisco is getting a big profit out of our tonnage they [fol. 355] ought to sacrifice something. I don't know what profit the Frisco made. They are getting more out of it than we do (Tr. 1969). We get no part of the Frisco rate. We would like to have them handle the freight without requiring us to pay per diem, and we have not asked the Frisco to give us a division of its rate in addition to our local rate (Tr. 1917). We want the Frisco to pay our per diem. It looks to me that it is their per diem more than it is ours. There is no other expense that I can see that they are concerned in. We are concerned in it but it costs us more to get this freight ready for them and so forth than

it does for them to furnish the cars to transport it in. I think that no matter what the circumstances are, we ought to have enough time to handle the stuff. We believe we could settle with the Frisco amicably if permitted to do so (Tr. 1971). If the Frisco is willing to pay our per diem on cars which we delay, I think they should do it. The allowance of 4 days' free time to us would let us out for nothing in most instances (Tr. 1972). I don't know whether our charges are the highest in the country or not. When we fixed those charges, we took our car hire into consideration as an operating expense, but it has been more than we ever anticipated. We now want that expense shifted to somebody else. Let me say that none of us who were concerned in this railroad knew anything about railroads. We are trying to get the plan worked out and put the road on its feet (Tr. 1973). If the Frisco paid all the expenses it would be a pretty good railroad. We operate 14.7 miles of railroad from Mansfield to Ava and interchange with the Frisco at Mansfield, Missouri (Tr. 1974). On all stuff that we originate, we have to perform a weighing and inspection service (Tr. 1975). The inspection I refer to is on inbound traffic. I don't know that our road has been valued (Tr. 1976). We put $15,000 in the railroad and sold $28,200 worth of stock. We then borrowed $14,500 and have put all the earnings into the road (Tr. 1977). Our detention per car is pretty high but we operate through mountainous country and the railroad is practically all curves. Our freight trains make a round trip every day and sometimes more, but they seldom run on Sunday (Tr. 1978). The officers of the company receive no salaries. The road [fol. 356] pays straight per diem on everything (Tr. 1979). We perform no terminal switching.

C. M. Sherwood was called as a witness and, being duly sworn, testified as follows:

I am Auditor and Traffic Manager of the Fairchild & Northeastern Railroad, which has a capitalization of $500,000 (Tr. 1980). It was built in 1882 as a plant facility logging road. It now operates approximately 23 miles of track from Fairchild, Wisconsin, to Greenwood (Tr. 1981). We connect with the C. St. P. M. & Omaha Railway at Fair-

child and the Soo Line at Greenwood. Our basis of car hire with these two carriers is: On an empty car we receive 48 hours' free time, on a load in one direction 96 hours free time, and on a loaded car in both directions 6 days' free time, all exclusive of Sundays and holidays. After the free time, we pay demurrage of $2 a day for the first 5 days and $5 per day thereafter without averaging. These arrangements have been in effect for many years and are identical as to both roads except that we pay mileage to the North Western on private cars and system hire refrigerator cars, while to the Soo Line we pay demurrage on all cars (Tr. 1982). We run a mixed train daily except Sunday. In 1926 we paid $905.75 for car hire, of which 10% was on mileage cars. In the first four months in 1927, we paid $66.11 in car hire, of which $44 was mileage on private cars. The car hire in 1926 was rather high as for half the year we ran only tri-weekly service. During the same period, on a per diem basis, we would have paid $5531 (Tr. 1983), which would have been 11% of our gross revenue of $40,911.91 in 1926 and 9% of gross revenue of $9,689.46, in the first four months of 1927. Straight per diem would put our road out of business and constitute an unfair cut in our divisions, since our car hire contracts with the two connections were made with knowledge of our divisions. In addition, we are a terminal and originating road and have to face unusual car detention on this account. Our average is at least three days. We wish to continue our present basis of car hire. We feel that as long [fol. 357] as Paragraph B of Rule 6 stands in its present form we are in constant and immediate danger of having these arrangements canceled (Tr. 1984). We handled 2197 carloads in 1926. There are a number of canning factories, lumber yards, etc. on the road, which is mainly an agricultural and dairy road. If the road was abandoned it would leave the communities we serve without railroad service and would add considerably to the marketing costs; there are no hard roads in the territory we serve (Tr. 1985).

Cross-examination:

I do not know who owns the railroad, but our annual reports to the Commission show this; I think Briggs and Turivas of Chicago are the owners (Tr. 1986). On a car empty inbound and loaded out we get 96 hours' free time,

and on cars loaded both ways 6 days' free time, after which we pay regular demurrage (Tr. 1987). The North Western and Soo Line undertook to change it, but after a conference they decided to leave it as it was (Tr. 1988). Practically all our service is line haul service. We have very little local service or switching service. Most of it is interline haul traffic. On interline traffic we get a division of the through rate in practically every case (Tr. 1989). We have 20 cars, do not belong to the A. R. A. and do not subscribe to the Per Diem Rules. We use our own equipment in local service and do not interchange that equipment (Tr. 1990). We have two locomotives and apply the National Demurrage Rules against shippers and consignees. The railroad serves a population of about 5,000. Our present car hire arrangement has been in effect for 10 or 15 years (Tr. 1991). Under our agreement we pay demurrage on private tank or refrigerator cars, except to the North Western, and to that road we pay mileage (Tr. 1992). It does not make much difference to us whether we report the mileage cars direct to owners or to our connections (Tr. 1993). We use perhaps 100 of them a year. We are not making any money. We are trying to build up a line which is in pretty bad shape, and we are holding our own. We can't spend any more money than we have [fol. 358] and what we are getting we are putting back into the road and not doing what we should. We are trying to keep in existence. Our present book investment is somewhere around $250,000 (Tr. 1994). The Commission has valued our railroad, but I don't know what the value is. In 1926, we paid $925.75 for car hire (Tr. 1995).

OREN A. SMALL was called as a witness and, being duly sworn, testified as follows:

I am Auditor for the Receiver of the Chicago, South Bend & Northern Indiana Railway. I have here a map of that railroad.

(Said document received in evidence as Exhibit No. 152.) (Tr. 1996.)

From South Bend our line extends in a Southwesterly direction to LaPorte, thence to Michigan City 40.8 miles;

from South Bend in an easterly direction it runs through Mishawaka and Elkhart, thence in a southerly direction to Goshen, a distance of 25.9 miles. We also operate City street car lines in Goshen, Elkhart, Mishawaka, South Bend and Michigan City. It connects with the Pere Marquette at Michigan City, Indiana, the New York Central at Osceola, Indiana, and the Pennsylvania at South Bend, Indiana. We receive carload freight at these three connections. We receive from the Pere Marquette only company material for use by us (Tr. 1997). There is in effect at Michigan City a switching tariff, but we are not on a per diem basis. Our railroad is treated as an industry and pays demurrage. From the New York Central we receive inbound tonnage to the water works at Mishawaka. For this service we get a switching rate of 10¢ a ton with a minimum of $3 a car. We pay no per diem and the New York Central collects demurrage from the City of Mishawaka (Tr. 1998). We are treated at this point as an industry. We interchange no traffic with the Pennsylvania as movements through this junction have been discontinued (Tr. 1999). In 1926, we received $105.27 for switching on traffic to the water works at Mishawaka from the New York Central. On straight per diem we would have paid $40 in car hire on this traffic. If we had to pay straight per diem we would have paid in 1926 to the New York Central on the 20 cars handled approximately 38 per cent of our average revenue on the [fol. 359] cars. We would have had no revenue except the possibility of the execution of an agreement with the City of Mishawaka to cover the expense. I doubt that I could interest the City in a matter between the New York Central and my company (Tr. 2000). In 1926 we had a surplus of $69,396.55 from all sources. None of our industries are interested in the railroad.

Cross-examination:

The volume of our interchange with the Pere Marquette is small (Tr. 2001). Car hire on our railroad is not much of an item. We operate an electric line. On traffic from the Pere Marquette we are the consignee. On traffic from the New York Central we are only a switching agent and receive only our switching charge: the Central allows the water works at Mishawaka 48 hours' free time and collects demurrage (Tr. 2002). We are satisfied with that arrangement.

I am also General Auditor of the Southern Michigan Railway Company, and have prepared a map of that property.

(Said document received in evidence as Exhibit No. 153.)

The track extends from South Bend, Indiana, to the city limits of St. Joseph, Michigan (Tr. 2003). The distance between terminals is 35 miles. We connect with the Michigan Central at South Bend and at Hickory Creek, Michigan. At South Bend we perform a switching service on inbound traffic except to the water works (Tr. 2004). On traffic to the City of South Bend we pay no per diem and the Michigan Central collects demurrage from the City. The same arrangements are in effect to other consignees. We receive $7 a car on all traffic except coal to the city on which we receive 17¢ a ton. Our charges are not absorbed by the Michigan Central (Tr. 2005). It was agreed between the railroads that per diem would be eliminated since our service was covered by a contract price which would not more than pay the actual expense and we could not afford to pay per diem and demurrage would accrue to the Michigan Central (Tr. 2006). Our company was treated as an industry. We paid no per diem to the Michigan Central in 1926 (Tr. 2007). Had we paid per diem [fol. 360] our costs would have been $74, on traffic from which we received gross revenue of $320.06, and would have resulted in our handling the traffic at a loss. The company operated at a net loss of $21,828.02 in 1926. No industries are interested in the railroad. On traffic through our connection at Hickory Creek we are on a straight per diem basis with the Michigan Central and assess and collect demurrage against consignees and shippers. We participate in no through rates but collect our own charges. Inasmuch as all freight originating on Southern Michigan Railway Company and delivered to the Michigan Central is business which the Michigan Central would not otherwise participate in, we feel that as a short line we should have at least a reclaim of two days on every car (Tr. 2009). This would give us the same free time allowed a consignee or shipper and in practically all cases the Michigan Central get a fairly long road haul and it would be no more than fair that they should stand at least a part of the per diem charges. In 1926 our revenue on this traffic was

$9,125.79 and we paid $2,307 for car hire or more than 25 per cent of our gross revenue on that business (Tr. 2010). 572 cars were handled through this junction in 1926—419 inbound and 153 outbound.

Cross-examination:

At South Bend we perform terminal switching and collect a switching charge from the consignee in addition to the Michigan Central rate (Tr. 2011). That charge is not absorbed by the Michigan Central and we pay no car hire. Demurrage is collected from the consignee by the Michigan Central. We have no outbound traffic at that point nor at Mishawaka (Tr. 2012). Only a small volume of traffic moves through this junction (Tr. 2013). My idea concerning the traffic interchanged at Hickory Grove, is that the Michigan Central would not get our traffic if we did not give it to them. Since we are doing the terminal work and the Michigan Central gets a road haul, they should split the car hire. Since we are a terminal for traffic on which the Michigan Central gets a road haul, they should stand part of the terminal expense such as the car hire (Tr. 2014). [fol. 361] We feel that the Michigan Central is using our road as an originating line, rather than our road using it as a delivering line.

Several years ago, the Pere Marquette applied for permission to abandon a branch line which served Berrien Springs and other towns. Our road was approached as to the possibility of its taking over the business, which had dropped to such an extent that the Pere Marquette could not profitably operate the branch due to maintenance charges. We were not interested enough to spend any money to take over the terminal facilities at Berrien Springs or at Scottdale. Finally a three-party contract was made by us with the Pere Marquette and the Michigan Central, whereby we would take over the terminal facilities at Berrien Springs and take care of the outbound shipments and the few inbound shipments at Scottdale: the Pere Marquette would pay for the building of the connection beyond their trackage and ours in Berrien Springs and also pay one-half of the connection at Hickory Creek and the Michigan Central would pay the other half. The Mich-

igan Central was so anxious to get this business that it could never have gotten, that it paid that one-half. If it was so anxious, why wouldn't it be just as reasonable to suppose it would be willing to participate in the car hire in order to continue that business (Tr. 2016). All our traffic through Hickory Creek is line haul traffic and we receive our own local rate (Tr. 2017). Our proposition amounts to passing on to the Michigan Central the disadvantages we are now under because of delay of more than the demurrage time of the consignees in unloading. It is simply a matter of asking for a reclaim (for two days on each car). If we keep it more than two days we are willing to pay for it. Our railroad is an electric line (Tr. 2018). All our service is line haul service (Tr. 2019). In 1926 our total revenue was $199,306.60 and freight revenue was $35,-356.29. Our net revenue from railway operation was $28,-224.60 on a book investment of $3,316,619.07 (Tr. 2020).

[fol. 362] V. E. Anderson was called as a witness and, being duly sworn, testified as follows:

I am Manager of the Traffic Bureau of Muskogee, Oklahoma, and have written authority to appear for the Muskogee Electric Traction Company (Tr. 2022). I have had 12 years of railroad experience. The Traction Company is an Oklahoma company which connects with the Missouri-Kansas-Texas and St. Louis-San Francisco at Muskogee, Oklahoma, and with the Missouri Pacific at Ft. Gibson, Oklahoma. I have prepared a map of its lines (Tr. 2023).

(Said document received in evidence as Exhibit No. 154.)

All the towns served are small with the exception of Muskogee and Ft. Gibson. The Company owns 26 electric passenger cars, 3 freight motors and 2 work cars. It operates a total of 31 miles of track (Tr. 2024). Our Freight Circular No. 14, I. C. C. No. 17, described the service rendered by the Company (Tr. 2025). We operate freight and passenger service. In 1926, our passenger revenue was $170,889.96 and our freight revenue was $15,780.26, of which $2,770.46 came from interline freight. 95% of our freight revenue is from interline freight either on a switching movement or on a division of the rate (Tr. 2026). The

company originally furnished only passenger service but got into the freight business. There is no community of interest between it and any industry served. It has outstanding $498,500 in common stock and $600,000 in bonds. No dividends have been paid on the stocks since 1913 (Tr. 2027). The Company has always settled car hire on the basis of 2 days' free time with demurrage thereafter. Cars in interstate traffic have been delivered to us on the same basis as to an industry. We paid demurrage to the carriers and we collected it from the industry. This basis was approved by the Corporation Commission of Oklahoma in its Order No. 2255, as to intra-state traffic. Other than this the Traction Company in addition to 48 hours' free time, is also granted 12 hours free time to cover its handling of the cars to and from the industry. We are a party to the National Demurrage Rules (Tr. 2028). We paid [fol. 363] $82 in car hire in 1926 and collected $56 in demurrage. Our net car hire was less than 1% of our freight revenue. We own no interchangeable freight cars. Under straight per diem, we would have paid about $2,718 in car here in 1926 (Tr. 2029). In that year we handled 1392 carloads with an average detention of slightly less than two days. We collect on most of our traffic switching rates of $10 a car and on the rest of our traffic divisions of published through rates (Tr. 2030). I think our present car hire basis is fair because it puts the industries served by us on the same basis as they would be if served direct by our connections who receive all the road haul (Tr. 2031). None of our connections have endeavored to cancel our arrangements, and our divisions were agreed upon with knowledge of those arrangements. Our competing trunk lines are able to hold cars for loading and we must have the same right without payment of per diem (Tr. 2032). It is wrong for us to pay per diem since our connections receive a greater percentage of total revenue. In 1926 we used 1392 cars, of which 279 were not owned by our connections.

Cross-examination:

Our Company is principally a street car company (Tr. 2033). The road is electrically operated (Tr. 2034). I said that 95% of our freight was interline and the other 5% was

local. 99% of the cars we used were used in handling interline freight and the balance in handling local freight (Tr. 2035). We used about 1 per cent of all foreign cars in handling our local freight and received 2 days' free time (Tr. 2036). We retain the demurrage we collect. On interstate business we get 2 days' free time and on intrastate business we get an addition 12 hours free, after which we pay straight demurrage (Tr. 2037). Each car is settled for separately. In estimating what my car hire expense would be if we were under per diem, I do not allow for possible reclaims, although it may be that we would have received some if non-subscribers were allowed it (Tr. 2038). Our $10 switching charge on interstate traffic is not always [fol. 364] absorbed. In some cases $6.75 is absorbed and in other cases $3.75 is absorbed (Tr. 2039). On our intrastate business we get 12 hours' free time that an industry does not get, but I don't know how much traffic is handled under it. I think this car hire arrangement has been effective since the Company has been doing business (Tr. 2040). Our rates and divisions became effective in 1925. 5 per cent of our potatoes moved in refrigerator cars in 1927 (Tr. 2041) and some of the other fruits and vegetables move in the same cars. The A. R. A. Rules do not require us to pay $1 a day on refrigerators, but we included those cars in estimating the per diem we would have had to pay under A. R. A. Rules. The figures were worked up rather quickly and we had to take the total number of cars. I might say that you could deduct probably $50 on the refrigerator cars (Tr. 2042). We get refrigerator cars on the same basis (demurrage) as all other cars and not on a mileage basis. The competitors I speak of own their own equipment (Tr. 2043). It costs money to build cars, and it would cost our competitors something to hold their cars for loading, but all three of our connections are begging for a chance to put their cars out here. The Frisco, with whom we compete wanted to put their cars out there this year and hold them as not unchanged until loaded (Tr. 2044). Considering divisions, our holding cars without paying for them does not give us an advantage over our competing trunk lines which also hold cars for loading without charge; they store their equipment out there and they get the lion's share of the haul (Tr. 2046). I concede that

there is some money tied up in this equipment; but if these cars are standing idle it doesn't necessarily mean we should be paying rental on them. We are only asking a continuance of our present arrangement that is in effect on some of the subscribers. The Missouri-Pacific and the K. O. & G. hold cars for prospective loading and don't charge any per diem on them. The competitor I refer to is the Frisco Railroad (Tr. 2047). It is our competition that compels us to get cars and hold them ready for loading. If we had no competition we would have to have some cars on hand prior to being ordered for shipment. We have to [fol. 365] make our arrangements for cars prior to the movement. We seldom get cars empty and return them empty (Tr. 2048). I do not know where the switching district limits of Muskogee are, but they are established by the tariffs of each railroad. We have such a tariff now (Tr. 2049). The cars we use for perishable shipments are iced before we get them and the shipper or receiver pays for it. If we became a subscriber in order to get reclaim we would have to put on at least another man to handle the car accounting (Tr. 2050). It would probably take in 279 additional reports other than our connecting lines, but we have to have an interchange of cars and settlement on demurrages. Our connecting lines do that work now (Tr. 2051). On our potato movement the cars are delivered to us but are not interchanged until they are ordered by shippers.

C. H. SMITH was called as a witness and, being duly sworn, testified as follows: I am Auditor of the Muskogee Electric Traction Company (Tr. 2052). In 1926 we had a deficit of $18,548.52 after payment of all expenses and interest (Tr. 2053). Our book investment was $1,336,352.71 in 1926. We had net revenue of $13,040 before payment of interest (Tr. 2054). In 1925 our net income before interest was $32,024.87. That is designated as net railway operating income.

W. W. ALDRICH was called as a witness, and being duly sworn, testified as follows (Tr. 2055):

I am General Freight and Passenger Agent of the Central Railway of Arkansas. We prepared an answer to the Commission's Question-aire sent out by the Short Line Railroad Association.

(Said document received in evidence as Exhibit No. 155.)

I have prepared a map of the railway.

(Said document received in evidence as Exhibit No. 156.) (Tr. 2056.)

Our road connects with the Rock Island Railroad at Ola, Ark., where it operates over the Rock Island tracks from wye connections to the depot a distance of 1/4 of a mile. Our line extends for 12 miles to Fourche Junction. I have our time card with me which covers only the movement between Ola and Plainview, 7 miles, which is two round [fol. 366] trips daily except Sunday of a mixed train service (Tr. 2057).

(Said document received in evidence as Exhibit No. 157.)

$12,051, or 26% of our total freight revenue of $58,565. in 1926 was on local traffic of the Ft. Smith Lumber Company from Fourche Junction to Plainview, which is handled in the Lumber Company cars. This is the only traffic between those two points (Tr. 2058). I have prepared a statement showing how our operations affect car hire and demurrage.

(Said document received in evidence as Exhibit No. 158.)

We pay car hire on the basis of Appendix C, of Circular CS-59 of the Railroad Administration, the Birmingham Southern Rules. I have prepared a study of car hire conditions on our railroad applied to actual cars (Tr. 2059).

(Said document received in evidence as Exhibit No. 159.)

The exhibit shows that in November 1926, as an average period, we handled 189 foreign cars, of which 74 belonged to the Rock Island. These cars were held a total of 559 days (Tr. 2060). Upon these cars we paid no per diem but collected $82 demurrage. On a straight per diem basis we would have paid $513. It is shown that the inbound revenue on loaded movements is $4106.73 and this company's proportion of this is $1268.29, and that included in this com-

pany's proportion is $482.71, represented by the rate arbitrary over Rock Island junction point. On outbound movement the revenue amounted to $22,267.14 and this company's proportion was $3,753.79, and of this amount $1,631.71 represents the arbitrary over the Rock Island Junction point. The total average proportion of revenue for this company is $26.57, but this company contributed to that proportion account of rate $11.20 per car (Tr. 2061). In answer to the question-aire it appears that in 1925 this Company handled 1630 foreign cars which were held 5400 days. I have prepared a statement descriptive of our car movements showing principal commodities moved, for parts of five years.

(Said document received in evidence as Exhibit No. 160.)

I have also prepared a statement of the interline freight revenue for five years, showing the total amount and the amount accruing to our connecting line. It shows that on inbound traffic the Rock Island received average 47 per cent and on the outbound, 56 per cent of the total.

[fol. 367] (Said document received in evidence as Exhibit No. 161.) (Tr. 2062.)

I have prepared a statement showing 159 cars which moved to competitive destinations on the Rock Island from our railroad. We could have short-hauled the Rock Island on this traffic, whereby it would have received 48 per cent less on the listed traffic.

(Said document received in evidence as Exhibit No. 162.)

I have prepared a statement showing car hire, expense, demurrage collected, net operating revenue, etc. for 5 years.

(Said document received in evidence as Exhibit No. 163.)

Our line is a so-called Tap Line (Tr. 2063). Our divisions are limited by the Commission's order and if our free time were taken away, our connections could not make it up by increased divisions on lumber, our principal traffic, and so far as I know our car hire was not considered at that time. We were then on a demurrage basis. We cannot increase our local rates to get more money, as our lumber mills are already under a handicap of paying 1½¢ per

hundred more than their competitors on other lines. If we raised our rates on other traffic, our consignees would truck the freight to the junction point (Tr. 2064).

Cross-examination:

We do virtually no local business. Exhibit 155 shows that we held 1630 cars in 1925 a total of 5400 days (Tr. 2065). We perform no service upon which we could get a reclaim, so under the A. R. A. Rules we would have paid per diem of $5400 in 1925. We actually paid $148.47 (Tr. 2066). Exhibit 155 shows our demurrage accruals in 1925 as $1341 and Exhibit 163 shows our collections as $1242. There would appear to be some error in the figures (Tr. 2067). I think the $1242 is correct. We are satisfied with our present car hire arrangement and we want it to continue (Tr. 2068). We have a trackage and joint service arrangement with the Rock Island on which we think we are paying too much. It is an operating arrangement and has to do with car hire because we have to go on the Rock Island to do switching. It is nothing but an arrangement under which we pay the Rock Island something for using its track. All of our interline traffic moves on through rates out of which we get a division (Tr. 2069). We get a [fol. 368] 2½¢ division on lumber and our local arbitrary is added to it. In 1925, as shown on Exhibit 155, we had $7,958 left after paying all operating expenses (Tr. 2070). That amount was available for payment of interest obligations and dividends. From 1921 to 1925 our return upon book value has ranged from 1.79% to 5.15%. Cars are furnished to us by the Rock Island by being left at Ola. We do the switching (Tr. 2071). In getting cars from the Rock Island we take foreign line cars if they are available in preference to Rock Island cars, which we load to points off the Rock Island. We are guided by our experience in picking the cars (Tr. 2072). We comply with the Car Service Rules in loading out foreign cars so far as we can; we notify the industries to endeavor to load the cars to home route points (Tr. 2073). In 1924 we paid $147.47 in car hire and under the A. R. A. Rules would have paid $5400. I have not worked out the per diem expense to connecting lines (Tr. 2074), nor have I undertaken to make comparison of service with respect to mileage or otherwise. In

Exhibit 162 we could have short-hauled the Rock Island, as we control the routing (Tr. 2075), except when otherwise specified. We consider that we have done the Rock Island a favor in giving them this haul. The demurrage shown in Exhibit 163 is that which accrued on foreign cars, and on those cars we have made a profit in demurrage collections of $4,157 in five years. We collected that much more than we paid in car hire. I do not know what it costs us to police demurrage. We collect and retain our own demurrage (Tr. 2076). Our division on lumber is 2½¢ a hundred pounds, and we get an arbitrary in addition of 1½¢ a hundred pounds. That was the basis prescribed in the Tap Line Case for all tap line roads (Tr. 2077). When I spoke of competitors who did not pay the 1½¢ arbitrary, I referred to competitors on the trunk lines, such as the Rock Island, I presume the competitors on other tap lines in our territory do pay it. Our own cars are not interchangeable; they are used entirely in our own service. We have two locomotives. Our detention in 1925 was about average, but it has been less since 1926 (Tr. 2078). Some of the 1630 cars shown as received in 1925 may have been handled loaded in both directions. Prior to the adoption [fol. 369] of the present arrangement, we paid car hire under the Average Demurrage Agreement (Tr. 2079) with 2 days' free time for one load and 4 days' free time for a load in both directions. Our average revenue per car is about $26.57. The $11.20 which I stated our Company contributed to that sum is accounted for by the arbitrary rate over the junction point.

CLYDE E. FISH was called as a witness and, being duly sworn, testified as follows:

I am Vice-President of the Arkansas Railroad Company (Tr. 2080). I have prepared a blue-print map of the railroad.

(Said document received in evidence as Exhibit No. 164.)

The railroad extends from Star City, Arkansas, 18 miles, to Gould, Arkansas, where it connects with the Missouri Pacific, its only connection (Tr. 2081). The terri-

tory served comprises about 200,000 acres, with a population from 12,000 to 15,000 (Tr. 2082). The road was originally financed by the stockholders of a lumber company. It was dismissed from the Tap Line Case by the Commission and declared to be a common carrier. In 1920, it was sold in receivership to six residents of Star City, Arkansas (Tr. 2083) who purchased it solely for the purpose of insuring rail transportation to Star City. The road is capitalized at $65,000. It is a necessary carrier, for if it was abandoned it would leave the territory now served without rail transportation and would result in a tremendous loss in property value in the territory. The nearest other available railroad points would be Grady, 18 miles East and Rison, 22 miles West (Tr. 2084). I have prepared an income statement of the road for 1926.

(Said document received in evidence as Exhibit No. 165.)

I have prepared a statement of carloads handled in 1926.

(Said document received in evidence as Exhibit No. 166.) (Tr. 2085.)

In 1926, on 2,479 cars handled in interline service, we received an average gross revenue of $67,440.10 or $27.24 a car (Tr. 2085). Prior to March 1, 1927, the Missouri Pacific allowed us free time of 3 days, but on that date the arrangement was cancelled and we were placed on straight per diem. Prior to Federal control, we had an average agreement basis for car hire. Dur-
[fol. 370] ing Federal control we had 2 days' free time, being a party to the waiver agreement with the Director General. After Federal control we went back to the average agreement basis but later secured a more favorable basis from the Missouri Pacific and we had the 3 days' free time from September, 1924 to March 1, 1927. I have an exhibit showing the per diem paid to the Missouri Pacific in 1926 (Tr. 2087).

(Said document received in evidence as Exhibit No. 167.)

This exhibit does not include mileage paid on private cars, on which we paid mileage at 1½ cents and 2 cents per mile. In 1923, we paid $1589 in car hire, but under straight per diem we would have paid $6,424. I have prepared a statement showing the comparison of per diem between six months periods, in 1926 and 1927 (Tr. 2088).

(Said document received in evidence as Exhibit No. 168.)

In the 1927 period, our per diem was $3,149 on 1060 cars, and in the 1926 period under the old basis was $712 on 1096 cars. I do not think our present arrangement is fair. Our old agreement with the Missouri-Pacific was worked out as fair and reasonable to both companies and was cancelled without our consent and without provision for offsetting our increased operating cost. The per diem rules without free time or reclaim are unfair to a feeder railroad such as ours, whose business is all originated on its line, or where it is the delivering line, with a short haul. Our line is a short feeder line to the Missouri-Pacific (Tr. 2089). I have prepared a statistical summary of cars handled on our railroad in 1926.

(Said document received in evidence as Exhibit No. 169.)

This exhibit shows by months and for the year, the number of cars handled for the average number of miles each car traveled on our line, the average car miles per car per day and the per cent comparative to Missouri-Pacific use of cars on 30 car-miles per day as a unit. I think we do well on average detention of three days per car, in view of the fact that it requires two days to handle a car, from and to the connection, and allowing the shipper, if necessary, the two-day free time as provided for loading and unloading. [fol. 371] Our road operates main line mileage of 17.8 miles and 1.9 miles of side track (Tr. 2090).

Cross-examination:

The railroad will cost $125,000. The Examiner of the Commission has approved an issue of $100,00 of capital stock (Tr. 2091) but no notes. On Exhibit 165 our net operating income is $7,410.52 (Tr. 2092). The Missouri Pacific owns our rails and we pay rent for them. The 34 cars shown at the bottom of Exhibit 166 originated and terminated on our line (Tr. 2093). They were handled in our own cars of which we have 17. We do not interchange them. Our average detention in 1926 and 1927 could be determined by Exhibits 167 and 168 (Tr. 2094). Some of the cars we handled may have been loaded both ways. Our records consider the car as one car from the time we receive it until we give it back (Tr. 2095). On Exhibit 167 the 2106

(Said document received in evidence as Exhibit No. 172.) (Tr. 2111.)

On the 51 inbound carloads shown, we earned 16.16 per cent of the interline revenue and paid 28.73 per cent of the per diem. Our per diem was 10.13 per cent of our earnings and the per diem on foreign lines was 4.84 per cent of their earnings. On the 54 outbound carloads, our per diem ate up 33.20 per cent of our earnings. I have prepared a statement showing the same detail on the inbound cars.

(Said document received in evidence as Exhibit No. 173.)

Our road barely earns operating expenses. We cannot pass our per diem on coal cars on to the operator (Tr. 2112).

Cross-examination:

We have two electric motor cars which are sufficient to handle our local traffic. We have no local carload traffic (Tr. 2113). In 1926, only three cars of traffic were handled for the owning company (Tr. 2114). We have to haul cars for loading of twine because we never know when the buyers are going to ask that the shipments be made. The officials of the penitentiary from which they are shipped want the cars 10 or 15 days prior to loading. I would like [fol. 374] to have an arrangement which would permit us to put the cars in without paying for them in order to meet the Missouri-Kansas-Texas competition (Tr. 2115). We collect no demurrage on cars held for this loading, as the State is not willing to pay it, since it is not required to pay demurrage on cars placed by the Missouri-Kansas-Texas. We subscribe to the National Demurrage Rules, but I would not say this was a violation of the tariff, as the cars are not under order for any destined point (Tr. 2116). Sometimes demurrage accrues on those cars but we have been unable to collect it. On coal cars, we want an arrangement which will permit us to hold the cars without paying for them during all the time they are on our rails and at the mines (Tr. 2117). I think the car owner would be entitled to payment if we delayed the car, but if we don't delay it I don't think we should be required to pay. If we got 5 days' free time on other equipment we would get our cars

free on the average. Our average detention is about 5 days (Tr. 2118). I wouldn't say that my suggestion would eliminate all car hire on the railroad, although if our average detention was 4 days and we got 5 days free time it would (Tr. 2119). On Exhibit 171, we actually paid $133 per diem on inbound cars. To ascertain per diem on foreign lines shown as $330 I added 2 days to the date of the waybill and set it up at $1 a day. It is possible that more per diem accrued on the foreign lines (Tr. 2121). It is possible that on all the shipments shown on the exhibit, the trunk line was compelled to hold cars 10 or 15 days for loading, as we are. If all per diem on foreign lines was included, it might change the percentage entirely (Tr. 2122). Exhibits 172 and 173 only contain the detail supporting Exhibit 171. We handle our interline traffic under through rates (Tr. 2124), and of those rates we get a percentage division. All our traffic is line haul traffic. About 60% of our traffic is coal (Tr. 2125). We rate the one mine we serve. When it tells us the number of cars its wants, we notify the connecting carrier. On the cars for twine loading at the State Penitentiary, we do not regard them as placed until they are actually ordered (Tr. 2126). We have [fol. 375] settled on the straight per diem basis since 1915. We operate 17.6 miles of main line and 6 miles of city line; also 10 miles of yard track and sidings. The road runs from McAlester, Oklahoma, to Hartshorne, Oklahoma, and connects with the Rock Island at Alderson, Oklahoma (Tr. 2127). It also connects with the Missouri-Kansas-Texas at North McAlester. The Southwest Power Company furnishes less than 1% of the traffic of the railroad; the population of the territory we serve is about 25,000 (Tr. 2128). We operate through a rolling country with no bad grades. In asking for 5 days free time, I did not take into consideration the long delay in holding twine cars for loading; it is just based upon the general average detention. It was my idea that this 5 days should be applied on each individual 2 days, that would not accumulate any credit to be applied against a longer than 5 day detention on other cars (Tr. 2129). We paid $10,516 in car hire in 1926; that represents the same number of days detention of foreign cars on our line. Of the 2437 carloads I referred to, two loads might have been shipped in one car (Tr. 2130). I do

not know how many cars accumulated the car hire that was paid. I can supply that figure.

E. J. O'BRIEN was called as a witness and, being duly sworn, testified as follows:

I am Traffic Manager of the Kansas City, Kaw Valley & Western Railroad Company (Tr. 2131). It is electrically operated and has 35 miles of track, extending from the city limits of Kansas City to Lawrence, Kansas. It has two electric locomotives and four electric express cars. At this time freight produces 60% to 70% of our earnings. I prepared an answer to the questionnaire sent out by the American Short Line Railroad Association.

(Said document received in evidence as Exhibit No. 174.)

I have also prepared a map of the railroad (Tr. 2132).

(Said document received in evidence as Exhibit No. 175.)

Exhibit 175 also shows the Kansas & Missouri Railway and Terminal Company and Kansas City Southern, which act as intermediate lines between my railroad and other [fol. 376] Kansas City lines (Tr. 2133). We perform switching for the K. & M. Railway and Terminal Company under a contract on a per car basis.

(Said document received in evidence as Exhibit No. 176.)

The Terminal Company has about 6½ miles of main line and several side tracks. Its distance from the connection with our railroad to other lines ranges from 3/10 of a mile to 3.5 miles, but it must be used by us as we have no other connection at Kansas City. We have a connection with the Union Pacific and Santa Fe at Bonner Springs and with the Union Pacific at Lawrence, Kansas. We perform switching there for these lines and receive a reclaim from them (Tr. 2134). I have prepared a statement showing the cars originating on the Kaw Valley and going to foreign lines in road haul service in August, 1926.

(Said document received in evidence as Exhibit No. 177.)

August is a representative month to show our per diem, reclaim and revenue (Tr. 2135). My next exhibit is a recapitulation of Exhibit 177.

(Said document received in evidence as Exhibit No. 178.)

On the cars in Exhibit 177 the Kaw Valley earned an average of $23.68 per car and other carriers $67.64 per car. While the average total freight revenue per car was 71.32, the average proportion of the freight received by our company was 33.2 per cent, while the per diem amounted to $1.949 or 3.36 per car (Tr. 2136). Column 11 shows net revenue after per diem and reclaim is deducted of $19.42 per car. This, however, does not show the amount of switching which it is necessary for this company to absorb in addition to the per diem while loading and intermediate per diem while delivering to connecting carriers. I have prepared a statement showing cars received from connecting lines and moving to points on the Kaw Valley in line haul service.

(Said document received in evidence as Exhibit No. 179.) (Tr. 2137.)

My next exhibit covers 174 cars showing freight revenue and per diem on the Kaw Valley and connecting lines.

(Said document received in evidence as Exhibit No. 180.) (Tr. 2138.)

You will note that there was a freight revenue accruing to us of $46,667.11 or an average of $26.81 per car while the originating line received $65.39 per car, the total reve- [fol. 377] nue being $82.20 per car. We received 32.6 per cent of the total revenue on these cars. The per diem charge was $6.98 or $4.01 per car, leaving a net amount of $22.80 per car. This is considerably more than we earned on shipments which we originate partly due to the fact that a large proportion of them is sand, which is a cheaper commodity. On inbound traffic, the line haul carrier pays the per diem in getting the car to us, and on outbound cars we have to pay it (Tr. 2139). I have prepared a statement showing cars originating within the switching limits of Kansas City and coming to our railroad.

(Said document received in evidence as Exhibit No. 181.)

On these cars we pay reclaim to the line loading the car and also an intermediate reclaim consisting of 4 or 5 days

per car (Tr. 2140). Sheet 3 represents 90 cars with an average revenue of $35.04 per car, while the switching lines at Kansas City receive an average of $14.61 per car and the entire per diem while on their lines loading and getting the cars to this company is taken care of by the following charges per car. Intermediate switching lines per diem, average $1.01 per car, the total revenue per car $50.75. This company receives 56.6 per cent and is penalized for the following per diem; per diem while on our line unloading, $4.23 per car intermediate reclaim, $1.20 per car and reclaim while shipments are being loaded, $4.05 per car, a total of $9.48 which leaves this company a gross revenue after per diem and reclaim deductions of $25.56 per car. I have prepared a statement showing all cars originating on the Kaw Valley and destined to points on other lines within the switching limits of Kansas City (Tr. 2141).

(Said document received in evidence as Exhibit No. 182.)

I have also prepared a general recapitulation of the last four exhibits presented, covering the movement of all cars to and from the Kaw Valley in August, 1926.

(Said document received in evidence as Exhibit No. 182.)

On 1070 cars, our average revenue was $23.33, and other carriers received $64.80 (Tr. 2142). Our average per diem was $3.52 per car. We also paid terminal reclaims of $4.37 [fol. 378] per diem and intermediate reclaims of $1.01 per car, reducing our revenue to $18.61 a car. I have not shown that information with respect to the reduction in revenue of the other carriers (Tr. 2143). I have prepared a statement covering the potatoes handled during the season of 1927.

(Said document received in evidence as Exhibit No. 183.)

The excessive delay on these shipments was due entirely to weather conditions. It was necessary to condition some of these cars, which cost $2.35 per car in addition to the per diem. Thus it cost this company $10.90 in addition to handling the car from points where they were loaded to Kansas City and this does not include the intermediate reclaim paid on empties to us as well as loaded cars delivered to connections (Tr. 2144). The average revenue received on potatoes was about $22. a car, the divisions varying (Tr. 2145).

We formerly were permitted to hold potato cars without per diem for anticipated loading. Our connections received approximately 65% of the revenue on the cars shown on the statement, and I do not think their average per diem would be in excess of 4 days. I think we should have some allowance on account of these conditions, although 1927 was an exceptional year. Our ordinary detention in potato traffic would not exceed 5 days per car. I have prepared a statement showing gross freight revenue of this company during the years 1921 and 1926 (Tr. 2146).

(Said document received in evidence as Exhibit No. 184.)

The exhibit also shows the number of cars in road haul and switching service, average per diem paid and percentage of per diem to revenue. The percentage increase is due to the amending of the Per Diem and Reclaim Rules to which we seriously object. We believe the lines which are receiving our valuable business in road haul service should at any rate place us in the same position which — were prior to the changing of the rules which have been made from time to time from 1918 to date. We are now being penalized not by divisions but by the amending of the re-
[fol. 379] claim rules. It is the position of this company that as the rates at present are based on rates which were in effect in 1918 with the increases and decreases authorized by the Commission, that we should have the same earnings per car basis as we had in 1918 (Tr. 2147). We are not complaining of the per diem rates established by the Association but are complaining of the intermediate reclaim which became effective in Kansas City in October, 1925. This is costing us considerable money which we are unable to take care of by increased divisions due to the fact that our competing lines, the Santa Fe and Union Pacific have practically none of this reclaim (Tr. 2148). In 1922 our average per diem and reclaim was $3.48 per car; in 1926, $4.85 per car. We are willing to pay $1. a day for cars while in service on our line, but we object to paying intermediate reclaim because the intermediate switching charge was based on the payment of per diem by the intermediate line. We do not object to the increase in the per diem rate (Tr. 2149). We think cars are worth $1. a day. We own no equipment and should not own any as we are a feeder

line. I have prepared a statement showing the deliveries of freight originating on the Kaw Valley and destined to other lines, delivered at Kansas City in the first 8 months of 1927.

(Said document received in evidence as Exhibit No. 185.)

On this traffic the Kansas City railroads receive a large and valuable proportion of freight charges for road haul service (Tr. 2150), and should participate in the expense of loading the cars. We, being a short line, are naturally interested in making a fair return on the investment which we are not able to do at the present time on account of the exorbitant and unreasonable per diem and reclaim charges. My Exhibit 185 shows that this railroad is a feeder line. We delivered 5223 cars to the Kansas City lines in the first 8 months of 1927, and we think they should help us in taking care of our intermediate per diem, since they enjoy the large proportion of the freight rate (Tr. 2151). We do not deny that we are a road haul line, but our haul is very limited and our divisions are naturally limited and we think [fol. 380] we should be given some consideration on business which we deliver to the other railroads. I have prepared a statement showing the per diem and reclaim rules as of August, 1918, and as corrected since.

(Said document received in evidence as Exhibit No. 186.)

The intermediate reclaim, which is a heavy penalty in this company, is shown in per diem rule 5 (Tr. 2152). It is our position that the switching and terminal rates in Kansas City were based on the per diem rules in effect August 20, 1918 (Tr. 2153). The Commission permitted the switching rates to be increased but refused to allow the intermediate switching rate to be increased. The allowance of intermediate reclaim increases the income of the trunk line roads. It costs this company $1.01 per car, thereby decreasing its revenue in that amount on 625 loads in August, 1926. We cannot overcome the loss from intermediate reclaim by increasing our division because our competitors, the Union Pacific and Santa Fe, accept the same divisions as we do (Tr. 2154). It is necessary for us to get our equipment from connecting lines and hold it to protect our industries. This makes our per diem heavy, since the trunk lines which own their own equipment receive prac-

tically all the cars which we handle to or from Kansas City and we are acting merely as feeder line. We think we should receive some consideration for the business we originate and on which they have the longer haul. We subscribe to the American Railway Association Per Diem and Reclaim Rules, since we perform considerable switching at Bonner Springs and Lawrence (Tr. 2155) on which we receive reclaim. We are also penalized in per diem because of the class of commodities we handle, sand, rock and cement on which the revenue is small. I think we should receive 2 days' allowance on all cars (Tr. 2156) delivered to trunk line connections for road haul service, and that intermediate reclaim should be eleminated; and that no line should be permitted to reclaim on its own equipment in switching service on its own line, and that the rules should be so corrected that the trunk lines could extend to their [fol. 381] feeder lines consideration to protect their revenue in order to keep them in business. We are an associate member of the A. R. A. and have no vote. We belong to it in order to get our reclaim, as our switching revenue is not sufficient to take care of per diem without reclaim (Tr. 2157).

Cross-examination:

The answer to question 4 on page 2 of Exhibit 174 is the book value of our property $2,455,642.25. Our freight cars are interchanged only with other electric lines. The figure of $33,639.15 (Tr. 2158) is the per diem paid on cars used in all services after the deduction of the reclaim allowed. It is the balance left after deducting reclaim which we recovered (Tr. 2159). The 970 cars shown in the answer to questions 11 and 12 of the same exhibit do not include cars originating on our line and delivered to the Kansas City switching district, or cars originating in the district and terminating on our line. That figure covers cars local between stations on the Kaw Valley (Tr. 2160). Our traffic delivered in the Kansas City switching district is a switching proposition after it gets off our line. Our road subscribers to the National Demurrage Rules and collects and retains its own demurrage and subscribes to through rates with steam lines (Tr. 2161).

T. A. DARROW was called as a witness and, being duly sworn, testified as follows:

I am Superintendent of the Northeast Oklahoma Railroad, which is a short line serving the Oklahoma-Kansas Zinc & Lead Mining District. 84% of our traffic is outbound carloads. I have a map of the railroad.

(Said document received in evidence as Exhibit No. 187.) (Tr. 2162.)

The road has 24 miles of main line from Miami, Oklahoma, to Columbus, Kansas, with 26 miles of yard, spur and team tracks. We connect with the St. Louis-San Francisco, Missouri-Kansas-Texas, and Joplin & Pittsburgh Railroad at Columbus and at Miami with the St. Louis-San Francisco and through it with the Kansas, Oklahoma & Gulf. The road belongs to the American Short Line Railroad Association, is an associate member of the American Railway Association and a subscriber to the A. R. A. Per [fol. 382] Diem Agreement and Interchange Agreement. Our local business is about 50 cars a year (Tr. 2163). We own 80 coal cars and 4 box cars which are regularly used in interchange service. Those cars are sufficient for our local business. The road is a party to through tariffs and our off-line freight is handled on through billing. 75% of our gross revenue comes from carload freight. 84% of our total freight handled is originated by us and most of this is lead and zinc ore which must be shipped in Class "A" cars specially prepared for loading. We must keep a supply of box cars on hand at all times in advance of loading to protect this movement (Tr. 2164). On these cars we pay regular per diem. The loading is very irregular. Some days we will set 20 or 30 cars and the next day 50 or 60. We must, therefore, estimate our needs and place our orders for cars with connecting lines 24 to 48 hours in advance of ordering and accept them when given to us. Thus we stand more than our share of the necessary per diem since we only get a road haul of 8 to 14 miles. I have a statement of foreign cars handled, per diem paid and average detention for the years 1923 to 1926, inclusive.

(Said document received in evidence as Exhibit No. 188.) (Tr. 2165.)

The per diem rules do not work fairly on our railroad, as under the circumstances I have described, we have to bear what we believe to be too large a portion of the car hire. Our average detention is 4.39 days and is very burdensome. We subscribe to the per diem rules in order to get per diem on our cars inasmuch as under the A. R. A. per diem rules per diem is not pay- to a non-subscriber on its cars. Since we are a short haul road we ought to get a reclaim. I have prepared an answer to the questionnaire received by us.

(Said document received in evidence as Exhibit No. 189.) (Tr. 2166.)

The cost of preparing cars for ore loading on our road amounts to about $1 a car.

Cross-examination:

The tariffs do not require that door protection on these cars be furnished by the shipper at his expense. The Frisco Railroad furnished this protection and competition compelled the other roads to do it (Tr. 2167). Our trouble in a way is that our shippers require us to furnish equip-
[fol. 383] ment quickly and on short notice, and we, therefore, have to keep a supply on hand on which we pay per diem (Tr. 2168). Because we are an originating road with a short haul, we think our connecting trunk lines should bear a portion of our per diem expense on cars on which they get a long haul. The trunk line gets the long end of the revenue, and because we get the small end we think they should pay part of the per diem (Tr. 2169). If we got high enough earnings we would be willing to pay per diem. There is no question but that we earn more per ton per mile than any of our connections on joint traffic and also per car, but we are performing a service that is worth more. Because our revenue is small, as compared with that of our connecting trunk lines on business originating on our lines, we think we ought not to pay per diem. I have made no comparison of the service rendered by us and by the trunk lines (Tr. 2170). I think our connecting trunk lines should bear a portion of our per diem either through reclaim or free time. We want 2 days' free time with per diem thereafter because we are a short road and our revenue is small

cars are per diem cars and the 2479 on Exhibit 166 includes mileage cars (Tr. 2096). Exhibit 167 shows the actual number of cars on which we pay per diem, no matter how loaded. On Exhibit 169 the 120 cars handled in January moved an average of 8 miles a day on our rails, which is 27% of 30 miles a day (Tr. 2097). The 30 car miles per day on the Missouri Pacific is their statement of average car mileage on all traffic. I don't know what percentage of all Missouri Pacific traffic is represented by the 2106 cars. We do not want a mileage basis of car hire. On interline traffic we receive our money under a division of joint rates (Tr. 2098). 90% of our interline traffic moves on joint rates and the other 10% on local rates. Our local rates are in addition to the junction point rate. We perform very little switching service. We own three locomotives and subscribe to the National Demurrage Rules (Tr. 2099). We assess and collect our own demurrage, which in 1926 amounted to approximately $300. The stock of the road is owned by 4 individuals who are neither shippers nor consignees. Our territory served has a population of 10,000 to 15,000 people. During Federal control we paid per diem with 2 days' free time (Tr. 2101). From the end of Federal control to Sep-
[fol. 372] tember 1924, we had 3 days' free time (Tr. 2102). That continued until March 1, 1927, since when we have been on straight per diem. We have been billed for it, but haven't paid yet. We want the basis in effect prior to March 1 (Tr. 2103). The book value of our investment in road and equipment is over $200,000. The Commission has valued our railroad at 130 some thousand dollars not taking into account depreciation nor the rails which are owned by the Missouri-Pacific. The Missouri-Pacific owns the actual rail in our railroad. We own the right-of-way, the roadbed, 17 freight cars and the ties. Our cars are not interchanged (Tr. 2104). Practically all of our traffic is line haul traffic (Tr. 2105).

W. H. GOODNER was called as a witness and, being duly sworn, testified as follows:

I am Traffic Manager of the Pittsburgh County Railway. I have prepared a blue-print map of the railroad which is an electric line (Tr. 2106).

(Said document received in evidence as Exhibit No. 170).

In 1926, we handled 2437 carloads. We own some freight cars but they are not interchangeable and are used in local service. The railroad is owned by the Southwest Power Company which is controlled by the Electrical Management & Engineering Corporation of New York (Tr. 2107). The railroad is a common carrier, and in 1926 had gross revenue of $73,053.10 from passenger fares, $14,884.12 from local freight service, and $56,706.30 from interline freight, $3,001.64 from baggage, mail, express and special car hire. We have never subscribed to the A. R. A. Per Diem Rules, but make direct settlement with our two connections, the Rock Island and Missouri-Kansas-Texas on a per diem basis without free time. I tried to get a modification of this but was told that because we were not subscribers we could not have any other basis (Tr. 2108). In 1926 we paid $10,516 per diem, representing 18.54% of our gross interline freight revenue. Our largest tonnage is coal and we are dependent upon our connections for equipment. When the coal market is not active, we are required to hold cars at the mine for a period of 10 to 20 days without cost to the operator but at a cost of $1 a day to us. Again, when a considerable number of cars loaded accumulate at the mine, we [fol. 373] find it necessary to refuse to furnish the mine operators with further empty equipment on account of the large number of "no bills" or cars loaded at the mine which they are unable to dispose of. When this occurs we usually have on hand at the mine 15 or 20 loaded cars costing us $1. per day each, and we are not allowed any reclaim from our connections on these cars (Tr. 2109). On twine loading we also have to hold cars empty 10 to 15 days in advance of loading so that the shipper will have enough equipment when the commodity begins moving but have not been successful in getting an allowance on these cars. I think we should have actual free time on coal equipment and 5 days' free time on other equipment, with $1 per day payment thereafter (Tr. 2110). I have made a study of the relation between per diem and revenue on our road and our connections, covering February, 1927.

(Said document received in evidence as Exhibit No. 171.)

I have also prepared another exhibit giving the detail of Exhibit 171.

because of our originating service, and would not expect free time on inbound traffic or traffic which we originate and which terminates in the Kansas City switching district. We only want it on traffic which moves beyond Kansas City on a line haul. We want it because we have to hold cars for prospective loading (Tr. 2186), sometimes for 3 or 4 days, particularly on account of weather conditions, and we believe that line that participates in the freight rates should participate in the per diem cost. We want the two days' free time because the line haul carrier gets a larger proportion of the revenue and our division of the through is not as great as the local rate to Kansas City. For the same service we get more money [fol. 386] in one case than in another, because in one case we participate in through rates and get a division and in the other case we get a local. A division is almost uniformly less than a local rate (Tr. 2187). That is true on other roads and our situation is not peculiar in that respect although we have more expense because we have two intermediate switching lines and don't own any equipment. Their hauls are short and we necessarily have to hold equipment on our lines to protect loading. One reason we want free time is because our revenue is lower under the divisions of the through rates than it would be under our local rate. The other reason is because of the intermediate lines. On sand which we originate and which terminates in Kansas City there is no intermediate reclaim. We don't want free time on business ending at Kansas City (Tr. 2188) because we get a larger proportion of the rate. That is the reason we want free time on shipments beyond Kansas City. The distinction between the two classes of traffic is that on local traffic we get more money. On the other traffic we can't afford to pay per diem while cars are waiting for loading. I said that I thought cars were worth $1 a day, but if we get free time the road haul lines beyond Kansas City would pay for the cars (Tr. 2189). Our plan is to have the road beyond Kansas City pay 2 days of the car cost while the car is on our line in addition to paying its own cost. For instance, a car originating at Bonner Springs today and we deliver that car to the Burlington—we would go through two intermediates getting there. We believe on account of originating that business and controlling a great deal of the routing that we should be made practically equal to them in proportion to their mileage or

earnings on the car. In cases where the road haul carrier received no more revenue than we did, it could still afford to pay on the average since that wouldn't obtain very often (Tr. 2190). We want our connections to put the cars on our line and let us keep them until we need them for anticipated loadings. As soon as we spot them at the plant or put them on demurrage, we would be willing to pay per [fol. 387] diem from them. We think that is justified because we get less revenue and because we are under the expense of originating the shipments; we solicit the business, bill it, furnish way bills on it, etc. My idea is to sell the traffic to our connecting lines for $2 (Tr. 2191). We would expect them to pay $2 for the shipments that we saw fit to route over their line if the Commission said we could do it. We would not want to allow 2 days' free time in cases where the road haul carrier pays the intermediate reclaim because our proportion of the charges is small in proportion to the total. We are a feeder line. A lot of inbound traffic is entirely due to our solicitation; maybe one of the connecting lines get it. Some of our traffic moves 35 miles, but the larger proportion of it is hauled 13.7 miles (Tr. 2192). In cases where an inbound road haul carrier hauled it the same distance that we did, made the tariff absorptions and paid the intermediate reclaim, I would not be willing to allow the 2 days' reclaim because we do not get 50% of the rate. Our division depends on the commodity. In the supposed case, our division probably would be an arbitrary, because the large proportion of our inbound freight is coal and originates a hundred or more miles — and on inbound coal we get 33-1/3% (Tr. 2193) and have to pay intermediate reclaim to get the empty car back to the road haul line that brought it into Kansas City; therefore we would not participate in the reclaim coming to us. On the fourth line on page 1 of Exhibit 180 is shown a shipment inbound of cement sacks that originated on the Rock Island at Cameron, Missouri; moved to Kansas City and delivered to us. On that shipment we got $11 and the foreign line got $14. The Rock Island took care of switching and intermediate reclaim. The reclaim would not amount to more than one day (Tr. 2194). The switching was $6. So the Rock Island would take care of $7 which would reduce its earnings $7 and ours would be $11. That is the smallest revenue car on the sheet. In that case I do not think the

[fol. 388] Rock Island should have 2 days' free time, since they got a large haul on the cement out. I don't know how far it is from Cameron to Kansas City (Tr. 2195). I don't think that in such a case the originating line should not have the 2 days' free time. Intermediate switching reclaim is controlled at Kansas City by the lines at Kansas City, providing it is a unanimous vote when contrary to the A. R. A. rules. When the matter of putting on the intermediate reclaim was first brought up at Kansas City, we objected on the ground that the intermediate switching rates in effect then were permitted on the intermediate lines taking care of their own per diem charges (Tr. 2196). The rule passed, however, but the effective date was set ahead three months. We did not vote for the rule and it was not a unanimous vote. We voted against it and the records should show that (Tr. 2197). I know I never voted for it. The exhibits I put in show our shipments for August, 1926, but we did not show reclaims paid by other roads; all we undertook to bring forward was the intermediate reclaims paid by us (Tr. 2198). The allowance of intermediate reclaim has just wrecked us. The first 3 months after it went in, we made a check and it costs us twenty-six hundred and some dollars (Tr. 2199). My exhibits show that our per diem has increased practically $1 a car but not because of delay due to our railroad. It is practically all due to a change in the per diem and reclaim rules (Tr. 2200). There is no intermediate reclaim on sand destined within the switching limits of Kansas City but there is reclaim when it goes into road haul service. Sand is 50% of our outbound business and about 40% of our total traffic (Tr. 2201). Formerly 75% of our sand went to the Kansas City switching district but trucks have taken it and now about 15% goes there. There is no intermediate reclaim on that (Tr. 2202). For the first 8 months of this year 223 cars out of 5223 moved to points [fol. 389] within the switching limits of Kansas City. 3241 went through one intermediate line and 1724 went through two intermediates. Our traffic to the Kansas City switching district was light in 1927. Normally the movement would be heavier (Tr. 2203). We perform road haul service on this traffic. When we pay intermediate switching reclaim, we cannot get it back. On inbound traffic the intermediate lines reclaim against the road haul carrier (Tr. 2204). The

Kansas-Missouri Railway & Terminal Company, a subsidiary of the Kansas City Southern, and the Kansas City Railways, an electric line, are the only connections by which we get into Kansas City. Our competitors have their own rails into the city so that our disability lies in the fact that they have a railroad to Kansas City and we have not (Tr. 2205). I think this physical disability of ours should be equalized on account of the valuable business we give the trunk lines. We want reclaim by a railroad on its own cars handled in terminal switching eliminated, as that would induce the movement of cars to the home line. Reclaim on these cars affects us for if we load a Missouri Pacific car to an industry on the Missouri Pacific we have to pay an arbitrary of 5 days. Changing the rule would cost us money even though we haven't any cars (Tr. 2207). Reclaim on these cars costs us money in this way. We take a car out to Bonner Springs in road haul service and load it with cement and bring it into Kansas City and deliver it to the owning line in switching service, and they would reclaim on us an arbitrary of 4 or 5 days. We have one arbitrary of 4 days and practically all are 5 days. We handle none of our own cars in terminal switching service under reclaim, as we have no industries within the Kansas City switching limits (Tr. 2208). At the present time the Missouri Pacific reclaims on its own cars in switching service, and under my proposed plan no such reclaim will be paid. [fol. 390] Nothing is then paid for the use of the car, but in such an instance the line that owns the car would have it in its own switching service (Tr. 2209). They should not reclaim because they haven't paid any per diem. It is my understanding that the reclaim rules were designed to make the lines whole on per diem they paid out. Since such a road does not pay per diem on its own equipment, they should have no reclaim. The owning road in such a case gets the switching revenue for handling the commodity, and some switching rates are high enough to take care of per diem (Tr. 2210). Our switching rates are not high enough to do that. If the Missouri Pacific handled its own car in switching service, it would be at some expense because of the investment, but I think that would be worth while in order to get the car on its own rails; that is my viewpoint from my experience with lots of roads that own cars. My

Exhibit 183 covers detention to certain cars for potato loading (Tr. 2211). The detention is larger due to the bad weather, and we would like to transfer 2 days of it to our connections. They are not responsible for the bad weather but they get a valuable haul. On car 3796, the Alton got 65% of the revenue, but we do not know the distance they hauled the car (Kansas City to Peoria) (Tr. 2212). We paid $8.50 per diem and intermediate reclaim on that car. I could not figure the Alton per diem charges on it, but if it took over 8 days to get it to Peoria they would have a big claim on the car. I do not know what distance the Alton hauled that car to Peoria (Tr. 2213). I don't know how much per diem it paid or what its terminal expenses in Peoria were. It got 65% of the revenue, but I don't know how much it had left nor do I have that information on any other car. I say they got more money out of it net than we did because I can figure rates and divisions. In my Exhibit 184 the percentage of per diem to freight revenue in 1921 was .097 (Tr. 2214). That figure should be 9.7% and the figure in 1922 should be 14.5. We want the per [fol. 391] diem rules shown in Exhibit 186 reestablished (Tr. 2215) and in addition want the 2 days' free time. On the shipment shown in Exhibit 183, I do not think the connecting lines paid more than 4 days' per diem because I have an idea of the running time between the points. In the case of the first car, I don't know what per diem the Alton assumed at Peoria (Tr. 2216). The Alton runs into Peoria over the Peoria & Pekin Union, and I don't know what per diem the Alton assumed while the car was on that road, but under ordinary handling perishables are handled promptly after being loaded (Tr. 2217). I know nothing about the per diem accruals on my connecting lines. Our road has not been valued by the Commission and the value shown in Exhibit 174 is book investment. The rates of return are on the same investment. Almost all our interline traffic 99½% is handled under divisions of through rates. On local traffic we collect our local rate and pay the switching and intermediate reclaim. All of our traffic is line haul traffic except at two places where we perform terminal switching (Tr. 2218). We have only one station in the Kansas City switching district and with those exceptions the rest of our traffic is line haul. Our situation is peculiar. I do not think there is another railroad in the country in

the same peculiar condition as our railroad. It went in receivership in July, 1924, and was sold on the 12th of September of this year (Tr. 2219). My evidence was offered on behalf of the Receiver. We are only asking that intermediate reclaim and free time be taken care of because of the valuable business we give our trunk lines. Our divisions were all fixed prior to 1918 and the switching charges at Kansas City are also the same as then (Tr. 2220). Our divisions are on a percentage basis so that when the rates went up we got the same percentage of a larger amount. [fol. 392] Prior to 1918 there was no reclaim by a railroad on its own cars handled by it in terminal switching. That reclaim was provided for by paragraph 8 of Rule 6 and it remained in effect until 1923 (Tr. 2221). By that I mean that it was Section 8 of the Code of Switching and Reclaim Rules adopted May 20, 1914 (Tr. 2222). It was amended in 1923 and again in 1927. The Kansas City Code carried the same exception and was corrected automatically after the A. R. A. Rule was corrected. Our expense in waybilling cars is not substantial. The most expensive part is weighing, but, of course, it costs us to hire more clerks (Tr. 2223). If we were not a party to through rates we would have to weigh the car and send it out on an expense bill showing our local rate. I can give an example of cars upon which we pay intermediate reclaims. If we order cars from the St. Louis-San Francisco Railroad they deliver to the Kansas City Southern at 11:30 P. M. The Kansas City Southern also makes a delivery to the K. & M. at 11:30 but the cars from the Frisco are not delivered until the following day, which makes $1 per diem accrued (Tr. 2224) on the Kansas City Southern. If we get the cars before 11:30 the next night, we would not have to pay any reclaim to the K. & M., but if the car does not reach our rails until after midnight the next night, there would also be one day intermediate per diem on the K. & M., to be paid by us. If the cars were loaded back with a commodity other than sand destined to Kansas City in the switching limits, we would have to pay the intermediate reclaim going back. There would be none on the K. & M. as we perform their switching service and would make the transfer before 11:30 P. M., but if the cars were going to the Frisco we would have to pay the K. C. S. one day intermediate reclaim on the return move as it would not get them delivered prior to

midnight, making a total of 3 days (Tr. 2225), in addition to [fol. 393] the Frisco arbitrary of 5 days while the car is being unloaded. The practice in Kansas City is to deliver cars at 11:30 P. M. We have a per diem and reclaim Association in Kansas City composed of practically all railroads, which has rules which modify the A. R. A. per diem rules. This company is a member (Tr. 2226). The intermediate reclaim placed a heavy burden on us, but we thought that the intermediate rate contemplated the payment of per diem by the intermediate road. After intermediate reclaim was allowed we attacked the intermediate switching charges of the Kansas City Southern and the Kansas-Missouri Railway & Terminal Company as too high. The Examiner recommended that the case be dismissed but exceptions have been filed (Tr. 2227). The decision has not yet been made. If a car comes in empty to us and moves out loaded to the switching limits of Kansas City, or if it is going out into road haul service, we pay intermediate reclaim both ways. The rules only contemplate that we pay the reclaim when the intermediate road pays the per diem (Tr. 2228). We only pay in reclaim the per diem which accrues, except on terminal reclaim where there is an arbitrary. On intermediate switching we only pay per diem that accrues with a maximum of $1 per car on each movement. In 1922 we collected $1320 in reclaim on terminal switching at Lawrence and Bonner Springs. About four years ago we had the privilege of holding cars free of per diem for prospective loading with potatoes but we do not have it now (Tr. 2230). The third car on Exhibit 183 was held on our line 21 days. It may have gone into the shop for repairs. On many of the other cars the weather prevented us from loading them. The average is high, generally it is five days (Tr. 2231). Exhibit 184 shows entire per diem paid by us in each year less the reclaim we recovered.

[fol. 394] T. A. Fry was called as a witness and, being duly sworn, testified as follows:

I am Auditor of the Wichita Northwestern Railway. We executed an answer to the questionnaire (Tr. 2232).

(Said document received in evidence as Exhibit No. 190.)

The main line of the railway extends from Pratt, Kansas to Vaughn, Kansas, 75 miles. We connect with the Rock Island at Pratt, cross the Santa Fe at Belpre and connect with the Santa Fe and Missouri Pacific at Larned. We also have a branch line connection with the Missouri Pacific at Iuka and a branch line (23 miles) connection with the Santa Fe at Kinsley. The road is primarily a grain originating road (Tr. 2233). We serve a number of grain elevators and flour mills at competitive and non-competitive points, and also serve a sand pit, lumber yards, coal bins and oil stations (Tr. 2234). The population of the communities we serve range from 10 up to 5500, a total of upwards of 13,000. The abandonment of the railroad would increase the haul on grain to elevators, decrease land values and cause a total loss of the investment in industries at local points. We have been a subscriber to the Per Diem Rules Agreement since 1915 (Tr. 2235). Prior to 1924 we made strict settlement under the Per Diem Rules, but since we have had some special arrangements. The Missouri Pacific delivers us cars for grain loading upon which we pay per diem but get a reclaim from the Missouri Pacific until the cars are set for loading. In 1926 and 1927 this reclaim was only allowed on Missouri Pacific cars (Tr. 2236) whch are 90% of the cars we get. We have the same arrangement on the Santa Fe except that it has never given us any reclaim on other than Santa Fe cars. We pay no per diem on Rock Island cars until set to elevators for loading. We settle with the Rock Island on a net basis. I have a letter from each road confirming the basis of reclaim or allowance (Tr. 2237). These arrangements are not only satisfactory to connections but they have solicited [fol. 395] them from us. This spring we were asked if we would accept a number of cars for outbound grain movement on these same bases. In 1925 we paid per diem of $7,130.77 out of gross freight revenue of $112,919.02. On the strict per diem basis we would have paid out approximately $15,000. In 1926 we paid per diem of $7,332.34 out of gross freight revenue of $162,488.22. Under strict per diem we would have paid approximately $15,000 (Tr. 2238). Although our revenue was greater in 1926, we were able to keep down the per diem through favorable operat-

ing conditions. 70 to 80 per cent of one carload freight traffic is made up of outbound loaded grain movements. We have to have special car hire arrangements because grain moves in heavy seasonal movements and cars must be available so that the shipper can take advantage of favorable markets. If we do not keep our elevators supplied with cars, the grain (Tr. 2239) would move to elevators on other railroads, some of which are not more than 10 miles distant. Our railroad does not play one connection against another in order to obtain special car hire arrangements. Our connections voluntarily make the arrangements I have stated (Tr. 2240). The real reason probably is that the roads desire to get as many grain cars as possible in the territory and it is a convenience for us to store their cars for them, instead of having to store them on their own lines and possibly block tracks. On the Kansas & Oklahoma Railway, which connects with the Rock Island at Liberal, Kansas, the Rock Island has arrangements to store cars not only for loading on the Kansas & Oklahoma, but for loading on their own rails. 1% of our revenue is derived from switching charges (Tr. 2241). We own 39 freight cars of which we interchange 26. We own 4 locomotives and furnish some passenger and mail service. Approximately 90% of the cars we get from the Santa Fe and Rock Island are Santa Fe and Rock Island cars, [fol. 396] and 80% of the cars we get from the Missouri Pacific are Missouri Pacific cars. This does not take into account the private cars upon which we pay mileage (Tr. 2242). I conclude that approximately 85% of our outbound tonnage is handled in cars owned by our immediate connections. Their allowance of reclaim or free time is not a burden since they have idle cars. We are satisfied with our present arrangements which are also satisfactory to our connection. If we cancelled our subscription to the rules, we would be worse off because as a nonsubscriber we could not get reclaim or free time (Tr. 2243). We are not interested in the rule now, but we might be in the future, and we want the Commission to cancel the rule 6B so that we can negotiate with our trunk line connections, under the local conditions which I have described. We don't understand how the American Railway Association has any right to dictate to either subscribers or nonsubscribers the basis of settlement between a trunk line and a short line

connection. We have some traffic for which cars do not have to be stored, and we do not ask for free time on that traffic. Our main traffic is grain, the Commission fixed our divisions, which gives us enough revenue to make our per diem costs relatively small. Most of our traffic moves in stored cars and our detention is usually less than one day (Tr. 2244). If we did not have this storage arrangement, it would be a different situation. We should then be given a suitable reclaim, if we pay for cars on a time basis, but a mileage basis would be more equitable and fair. Straight per diem would not be fair to us any more than it is to a switching road which gets reclaim.

Cross-examination:

Our divisions were fixed as of September 1, 1923, when we were paying straight per diem without free time (Tr. 2245). The free storage is a benefit we have received since [fol. 397] our divisions were fixed. We have acquired some equipment since the time covered in Exhibit 190. For two months we have been interchanging 26 cars and receiving per diem on them (Tr. 2246). We did not interchange our cars prior to 1925, except in switching service and on that we allowed reclaim. The exhibit does not show the total detention of cars on our line but only per diem detention (Tr. 2247). I do not have exact figures on the per diem we would have had to pay under the strict rules. The figures I gave are a pretty close estimate. The cars in questions 7 and 8 of Exhibit 190 include private line cars on a mileage basis (Tr. 2248). The same exhibit shows per diam detention in 1925. Some per diem was paid on the stored cars (Tr. 2249). The exhibit shows per diem detention and includes the detention paid on those cars (Tr. 2250). The competitors to which I referred, and which would get the traffic if we did not store cars, are our three connections. They hold their own system cars which I presume costs them something: holding our own cars costs us something. We do not have sufficient equipment to furnish cars for all loading and must get equipment from our connections. If they did not give us the cars they would store them themselves (Tr. 2252). As a bare fact they are under the expense of holding their own cars for grain loading while we hold their cars without ex-

as compared with that of our connecting trunk lines. I have no idea as to whether or not that rule should be uniform (Tr. 2171). Our average detention of 3.77 days in 1926 is burdensome, considering the revenue we get for handling that traffic. If we had enough revenue to pay per diem and leave a profit, we would not object. Our equipment is interchangeable, and we would be willing to allow free time to other roads if our revenue was as large in proportion. The allowance of free time by us would depend on conditions (Tr. 2172). Since we originate the traffic and get a small revenue as compared with that of the trunk line, we think we should be compensated for the use of our cars. About 25% of our revenue is from passenger business. We get divisions of through rates on all freight traffic (Tr. 2173). We now pay straight per diem and have since 1921. We want 2 days' free time on empty cars received for return loading (Tr. 2174). We are not asking for anything on cars received loaded and returned loaded. I particularly have in mind an allowance on cars used in [fol. 384] ore loading. We operate through prairie country, serving approximately 50,000 people. Our revenue per car on ore traffic will average about $28. About half of this traffic goes to St. Louis and beyond (Tr. 2175). We figure that our mines will be depleted in less than 20 years when it may be necessary to abandon the railroad and there will be that loss of capital to amortize. I did not get up Exhibit 189. The figures in Exhibit 188 were made from records in our office (Tr. 2176). They would be more likely to be correct than those in 189. We handle some private cars on a mileage basis but I do not know how many (Tr. 2177).

E. J. O'Brien, having been previously called as a witness, was recalled and testified:

Cross-examination:

Our objection is to the reclaim that my road is required to pay on intermediate switching where we deliver the traffic to the intermediate road. This reclaim is paid by the delivering lines when both roads perform a road haul service (Tr. 2179), but where one line performs a switching service and the other a road haul service, the switching line pays

it—to reclaim afterwards. So that on our outbound traffic which we originate, we pay an intermediate reclaim, sometimes to two and sometimes to three roads, on the inbound traffic, the other road pays it. We pay it where loaded cars go outbound over an intermediate line, and we also pay it on an inbound empty car since those cars are picked up at Kansas City and delivered to us for loading and there is no road haul on the other side (Tr. 2180). Our principal complaint is against the intermediate reclaim because of our peculiar situation. It the rules were put back to what they were in 1918, we would not pay the intermediate reclaim and no road could reclaim on its own cars handled for it in terminal switching (Tr. 2181). We also want Rule 6B changed—that part that requires the non-subscriber to pay per diem without reclaim because we may not always be a subscriber, and in that case we would want to make per diem settlements on any agreed basis. We want Rule 6 [fol. 385] the same as it was in 1918. At the present time, if we withdrew from the Association, we would lose our reclaim on switching at Lawrence and Bonner Springs (Tr. 2182). We want Section B of Rule 6 eliminated, which would permit us to withdraw from the Association and leave us free to dicker with our trunk line connections with respect to reclaim. I don't know that that would extend us all other privileges of the Per Diem Agreement (Tr. 2183). In addition to the A. R. A., we have a large Kansas City per diem and reclaim association which affects Kansas City. If the rules were changed as we wish, it would leave us free to dicker with our connections on reclaim. We want the rules fixed so we can withdraw and still have what we now have (Tr. 2184)." We would like to have 2 days' free time on cars delivered to trunk line connections, but would be satisfied if the rules were the same as they were in 1918. I think the free time would be all right since our connections get a long and valuable haul. I don't believe the Commission can establish an iron-clad rule all over the country on per diem and reclaim, as our situation is different from any other railroad in the United States in view of the fact we have to pay in all cases one intermediate and in most cases, two. While the others may pay intermediate, they recover it at some point but we have no chance to do that. We want the Commission to give us 2 days' free time on our loaded cars outbound (Tr. 2185). We want the free time

pense. I don't think that gives us any advantage. I have no knowledge that our three connections are not able to store their own cars on their own line (Tr. 2253). I think we have a right as a railroad to collect per diem on our cars when they are used by other railroads, and that we also have a right to receive a switching reclaim. I do not deny the same rights to our trunk line connections. I take [fol. 398] the position that we should not pay per diem on the basis that if we were required to pay per diem on cars held for loading, we could not store them because our revenue would not permit it. I don't deny that the other railroads have the right to receive and collect per diem for that service, but if the other roads are willing to let us hold them for nothing, I don't know why we should not (Tr. 2254). If we could not store these cars for nothing, we would feel that we were being treated unjustly because the other roads would have an advantage since they can afford to store them. Their revenue is higher and permits them to pay and does not permit us. I don't know that that is the actual reason for them paying and our not paying (Tr. 2255). I don't think that is a situation that justifies the non-payment of per diem by us. We would not withdraw from the Association if Per Diem Rule 6 was changed as we want it, but we could withdraw and it would make no difference (Tr. 2256). We would be in the same situation as if we were a member so far as per diem is concerned. I regard our storage arrangements as a departure from Per Diem Rules 1 and 2 (Tr. 2257). We have one connection with the Rock Island, three with the Santa Fe and two with the Missouri Pacific. We have been a subscriber since 1915 and prior to then settled with our direct connections on the straight per diem basis (Tr. 2258). I said that I didn't think that the fact that our connections got a higher revenue on traffic originated on our line, was a reason why they should pay more of the per diem cost. What I intended to say was the reason why they could bear the per diem cost, rather than they should. My theory is that our connections should bear more of the per diem costs because they can afford it. They would obtain more revenue with which to handle it than we would (Tr. 2259).

[fol. 399] SHIRLEY SEWARD, having been previously called as a witness, was recalled and testified:

The Galesburg & Great Eastern Railroad connects with the Burlington at Wataga, Illinois, and runs east 9½ miles to Victoria, Illinois. It was originally built to serve coal mines. It went into receivership in 1895 and was operated by the purchaser until July, 1916. In October of 1916, it was bought by its present owners for $35,000. The capitalization is $50,000 with 411 shares of stock held by 125 stockholders (Tr. 2263). The road is in fair physical shape with light grades. It owns one locomotive and one combination passenger and express car, and a freight car used in local service only. It serves an elevator, a material and coal yard and a Farm Shipping Association at Victoria which has 350 people, and also a grain elevator at Alert, 4 miles west of Victoria. The nearest other rail transportation is 8 miles away. The road is primarily an agricultural one (Tr. 2264). It handled 977 cars in 1925 and 1926, of which 650 were outbound. The traffic consisted of miscellaneous commodities. In the same two years it had gross revenue of $23,245.37, of which freight constituted $17,951.82. The road operates one mixed train twice a day, daily except Sunday. The pasenger business fluctuates, depending on the condition of the roads (Tr. 2265). The passenger revenues average about $90 a month. The only connection of the road is with the Burlington, which allows it 2 days' free time on car hire with demurrage charges thereafter. This arrangement applies on all cars and has been in effect for 10 years. The road publishes the regular demurrage basis and is satisfied with its preesnt basis of car hire. It paid practically none in 1925 and 1926, but on straight per diem it would have paid $954 or 11% of its freight revenue (Tr. 2266). I have been over this road six or seven times, and I know these facts from my own personal knowledge. The [fol. 400] road needs some repair work and the management does not know where to get the money (Tr. 2267). I know that from financial statements of the road and from the statement made by its General Manager (Tr. 2268).

Examiner Rice: I don't think that the statement that the railroad doesn't know where to get the money is going to be of any help to the Commission in deciding the case, and probably won't be of any value (Tr. 2270).

The Witness: The stockholders have never received any return on investment and no general officer receives pay. The only men on the payroll are the Superintendent, Agent, Firemen, Brakemen and Section Men (Tr. 2271). The President of the road is a retired farmer, living at Galesburg. The road has divisions of joint rates with the Burlington, on some commodities the divisions averaging from 20% to 25%. On livestock it receives local revenue of $8.10 per car. If per diem costs were increased, they would have to be paid by the shippers and might divert traffic to other lines. The matter of divisions is now pending with the Burlington, and traffic diversion may be overcome if agreement is reached (Tr. 2272). The tentative offer of the Burlington would reduce its live stock revenues about 10% on interline traffic. The road is between 9 and 10 miles long, has one locomotive, one passenger car and one freight car, which is not interchangeable. Livestock does not move under divisions of joint rates; cement does (Tr. 2273). Other commodities move on local rates. In line haul traffic the road performs no terminal switching. The road has had a demurrage arrangement with the Burlington for seven years, and I don't know what the arrangement was before that. It publishes a demurrage tariff but collects no demurrage because of the prompt movement of cars, and has paid no per diem (Tr. 2274). I do not know what the net revenue or rate of return of the carrier was, but it [fol. 401] makes annual reports to the Commission (Tr. 2275). I think it has made these reports for the last 10 years (Tr. 2276). The road does not now originate any coal since the mines have gone out of business. It is satisfied with its present car hire arrangement. It gets 2 days' free time on each load interchanged. It is a steam railroad (Tr. 2277).

The Hoopole, Yorktown & Tampico Railroad operates from Hoopole, Illinois, 12 miles north to a connection with the Burlington at Tampico, Illinois. One round-trip is made daily except Sunday, with a mixed train (Tr. 2278). The road owns one engine and three cars, none of them interchangeable. It also serves Yorktown, Illinois, and Hoopole and Yorktown have no other rail transportation. The rail transportation was necessary to enable grain and livestock to reach primary markets. The road was, therefore, built in 1909 and was reorganized in 1913. It was

operated under lease from 1915 to 1922. It is capitalized at $67,000 represented by 670 shares. 400 shares are owned by August and William Mathias, farmers of Hoopole. The road has been valued by the Commission at $69,500 (Tr. 2279). It is not a subscriber to the per diem rules and has in effect with the Burlington a car hire arrangement which is a modification of straight demurrage. If the line gets a car on Monday morning and returns it to the Burlington by Thursday, in time to catch the Burlington's train in either direction, there is no penalty, as the Burlington operates but one train a day on its branch. This gives the shipper at Yorktown or Hoopole the same time that he would have if he were shipping from Tampico. Shippers and consignees on the road are subject to regular demurrage. The road turns over to the Burlington all demurrage which it collects. I do not know the reason for that (Tr. 2280). On a car which the short line holds 8 days it pays the Burlington $12, and if it collected $8 demurrage from the industry it would pay that to the Burlington. [fol. 402] That actually happens where demurrage is collected. The Burlington has been good to this railroad in many ways, and if 10 or 15 days' demurrage accrues on a car (Tr. 2881) the Burlington does not collect it. It probably offsets the combination of car hire and demurrage. The Burlington does not strictly enforce even the present arrangement if the short line cannot get a car back, except that the short line collects demurrage from its own patrons and turns it over to the Burlington. The attitude of the Burlington towards its short line connections is very liberal. This car hire arrangement has been in effect since 1913 (Tr. 2282). Prior to then the shipper was allowed only 24 hours, so that the car could be returned to the Burlington within 48 hours. In 1923 the Burlington began to charge straight per diem, but its officials changed this and sent a check for the amount that had been collected. In 1924 and 1925, the road handled 988 cars, of which 740 were outbound, consisting of live stock and grain. The inbound traffic consisted of miscellaneous commodities. In that period the gross freight revenue was $25,192.44. $67.62 was paid in car hire and on straight per diem $2,964 would have been paid (Tr. 2283). The total payroll in the same period was $12,604.57. No dividends have ever been paid. On most traffic the short line derives its revenue from local

charges. It only receives divisions of through rates on oil and gasoline. The division amounts to 5 or 5½¢ a hundred pounds (Tr. 2284). I have practically run the railroad for the last five years. Nothing is done without consulting me. I have never met a railroad that is as generous as the Burlington. The short line is well satisfied with its present car hire arrangement (Tr. 2285). That basis allows the short line 2 days' free time from the time the car is given to the short line, except that in addition the short line is allowed the time between 7:00 in the morning and the time the Burlington train goes through. Also the Burlington waives per diem where delay is due to extraordinary con-
[fol. 403] ditions (Tr. 2286). After the free time, $2 a day is paid for the first four days and $5 a day thereafter. Demurrage collected is also turned over to the Burlington (Tr. 2287).

The Hanover Railroad operates out of Hanover, Illinois, 2.6 miles north to a connection with the Chicago, Great Western at North Hanover. The Great Western is its only connection (Tr. 2288). Its entire traffic is handled into and out of Hanover, which is a town of about 1,000 people. A gasoline motor car handles passengers and express, and freight is handled by a gasoline freight locomotive. 360 carloads a year are handled inbound. The outbound tonnage is less than carload. The road was constructed in 1907 with capital stock of $300,000 furnished by individuals in Hanover. It now has 77 stockholders (Tr. 2289). It also has outstanding $7,500 of bonds on which interest is paid but no dividends have ever been paid. The road was built to furnish service to Hanover. Since 1920, the railway has had an average demurrage agreement with the Great Western under which it gets 2 days' free time after which it pays $2 a day for 4 days and thereafter at $5 a day. Sundays and holidays are not counted. During Federal control it had 2 days' free time with per diem thereafter and the same prior to Federal control (Tr. 2290). After Federal control the Great Western offered it 2 days' free with per diem or the average demurrage agreement, and the management selected the demurrage agreement. Under it the short lines car hire cost is practically nothing since it publishes regular demurrage charges against its own shippers and consignees. Under straight per diem its car

hire cost would approximate $720 a year. In the four years from 1923 to 1926, inclusive, its gross revenue was $44,567.73 and its operating deficit was $941.99. The Hanover Woolen Company has a very small interest in the railroad (Tr. 2291). I think the capitalization must be $30,000 instead of $300,000. The Hanover Woolen Company does [fol. 404] not have controlling interest. The road settles car hire on an average demurrage basis which is the same basis which it extends to its industries. Its car hire cost is nothing, as it collects the same amount it pays out (Tr. 2292). The railroad does not own any interchangeable cars but receives divisions of through rates (Tr. 2293) on practically everything. It furnishes its own power, which is gasoline motive power, exclusively. It operates over two grades of 2% each.

The Illinois Central Electric Railway Company operates an electric railway from Farmington, Illinois, to Lewistown, Illinois, with operating headquarters at Canton, Illinois. Passenger cars are run on schedule but freight service is intermittent. The road owns 6 passenger cars, 1 freight locomotive and 2 coal cars. It is paralleled by the Burlington with which it connects at St. David. It also connects with the Minneapolis & St. Louis at Farmington (Tr. 2294). The road serves six towns to and from which it hauls gravel, lumber, coal and miscellaneous commodities. On coal it receives a division amounting to about $8 a car. It handled 91 carloads in 1926, 37 of which were coal in local traffic (Tr. 2295) and 54 cars were inbound interline tonnage. In the same year 254 inbound interline merchandise cars were handled out of which it received about $4 a car. In 1926 the gross revenue was $43,921.50, of which $3,101.78 accrued on interline freight traffic. The short line has a demurrage basis of car hire with the Burlington and pays straight per diem to the M. & St. L. In 1926 it paid the M. & St. L. $603 in per diem or about 20% of its gross freight revenue. It will pay more this year, but there will be no car hire on the Burlington because of the demurrage basis. The road is capitalized at $200,000 with $87,850 of preferred stock. It also has outstanding $450,000 in mortgages (Tr. 2296). It was valued in 1921 by engineers at $614,037.46. No shipper has any interest in the railroad. [fol. 405] It has been built in sections from time to time between 1903 to 1911. The abandonment of the property is

now being seriously considered, as in 1926 it was operated at a loss of $19,815 (Tr. 2297).

The Cazenovia Southern Railroad connects with the North Western at LaValle, Wisconsin, and runs 6 miles west to Cazenovia. It is a community enterprise, the road being owned by business men. It owns an engine and two motor trucks. Up to two years before the War, it paid no per diem (Tr. 2228). It was then placed on straight per diem and is now on that basis as a nonsubscriber. Its gross revenue in 1926 was $12,000, per diem $700 and demurrage collected $50. No per diem was paid on stock cars. It handled 200 outbound loads and 207 inbound loads. It receives the same divisions of joint rates now as it received in 1911 when it paid no per diem. Practically the North Western does not collect per diem on stock cars (Tr. 2299). The short line is not charged with the cars until they are taken off the interchange and are loaded in one day so that no per diem accrues. Other cars are charged when they are placed on the interchange. Stock cars are placed on the interchange on order as the North Western keeps some at the junction for their own loading, and when the short line wants such a car it comes and gets it (Tr. 2300). I don't know why the North Western keeps stock cars at the junction, although it loads quite a few from their own yard there. The stock cars are not placed on the interchange track by the North Western. They are kept in the North Western's own yards and the short line gets them from there, rather than from the interchange track (Tr. 2301). The cars are held there by the North Western for loading and if the short line wants one it goes in and takes it. The present basis of car hire has been enforced since about two years before the War. Prior to then there was no basis of car hire settlement (Tr. 2302). [fol. 406] The present basis started in 1917. I do not think the railroad signed a waiver agreement during Federal control, which means that it would not receive free time. The road receives divisions of joint through rates which are slightly higher than the junction point rates (Tr. 2303). Very little of the traffic goes beyond Milwaukee which is about 125 miles from LaValle. The road is a little over 7 miles long and its division represents a shrinkage of from 12 to 15% of the North Western's rate. The road files reports

with the Commission, but I don't know how it came out in 1926 (Tr. 2304). In 1926 exactly $56 accrued in demurrage and a little more than $700 was paid in per diem. The figures I gave are fairly accurate.

The Ettrick & Northern Railroad was started by the citizens of the town of Etrick, Wisconsin, which is 10 miles south of Blair, Wisconsin, where the road connects with the Green Bay & Western Railroad (Tr. 2305). The town of Ettrick raised $100,000 by bond issue and bought the stock of the railroad. $44,000 additional was raised by public subscription and $49,000 by bonds. The road was completed in 1919. The equipment consists of a locomotive which is now out of commission, two passenger coaches, one Ford Truck and one trailer. Operation was discontinued in January, 1921 because the locomotive failed, but was resumed under receivership in January, 1922 (Tr. 2306). For the four years 1922 to 1926, inclusive, the road had net revenue of $9,188.98 (Tr. 2307), which left net revenue of $744.11 after taxes, per diem and interest were deducted. When the road went into receivership it owed preferred claims of about $10,000 and about $4,000 in interline accounts. From September, 1922 until September, 1926, it received 1319 carloads from the Green Bay & Western and delivered 822 carloads to that road (Tr. 2308). In the same [fol. 407] period it forwarded 1369 tons and received 2917 tons of less-than-carload freight. The road receives divisions which were issued by the Railroad Administration and have not been changed. It is allowed 15% generally of the Milwaukee rate, plus an arbitrary. On livestock it receives approximately 21%. The average revenues were about $23 a car. It pays straight per diem without free time on foreign cars and per diem with two days' free on Green Bay & Western cars, comprising about 20% of the total cars used by it (Tr. 2309). In the 4-year period mentioned, its per diem amounted to $4,349, or approximately 10% of the freight revenue, and collected about $600 in demurrage. On straight per diem its car hire would have amounted to about $6,500 and with two days' free time on all cars would have amounted to about $2,000. The community served needs the railroad which is not now operating carload service. A water tank fell on the locomotive and it is no longer in operation. The President of the Green Bay & Western said he was anxious to help the road

and would extend a demurrage basis on all cars if the short line (Tr. 2310) would pay demurrage collected by it to the Green Bay & Western. He told me that about two months ago. The road is now operating a Ford automobile, truck and trailer on the rails. The road has had 2 days' free time on Green Bay & Western cars since 1919 (Tr. 2311).

The Macomb, Industry & Littleton Railroad connects with the Burlington at Macomb, Illinois, and extends 20 miles south to Littleton, Illinois. It is an agricultural road and serves three grain elevators, operating one mixed train daily except Sunday. It pays car hire on a straight demurrage agreement. In 1926 it handled 770 cars, half of which were outbound. It paid $591 in car hire and collected $400 in demurrage. On straight per diem it would have paid about $2300 (Tr. 2312). The passenger traffic is negligible. The stock is owned by farmers in the territory and the road [fol. 408] has no through rates or divisions except on combination of locals.

The Laona & Northern Railroad, controlled by the Connor Land & Lumber Company, connects with the Soo Line at Laona Junction, Wisconsin, and operates 8 miles south to a connection with the North Western at Laona, Wisconsin. It was declared a common carrier in 1912 and is a so-called Tap Line (Tr. 2313). Its lumber divisions are on the Tap Line basis. It owns 3 small locomotives, 25 flat cars and 40 logging cars, none of which leave its line. It is allowed 4 days' free time on a carload one way and 6 days' on a car loaded inbound and outbound, with demurrage thereafter by both connections. This arrangement has been effective about 10 years. An attempt was made to cancel it in 1922 but the straight per diem bills were not paid and in 1923 the old basis was applied. The short line applies the same demurrage basis to its shippers. In 1926 the road had an operating loss of $6,773.02. It paid no car hire to the North Western and $175 to the Soo Line. It receives $3 a car on lumber and $1.50 a car on logs interchanged with the North Western. Per diem on this traffic would cost $2 a car (Tr. 2314). An attempt was made to increase this allowance to $5 a car, but the Commission declined to grant it. The same demurrage arrangement is applied by the short line to its shippers as is applied to it by its connections. The short line does not subscribe to the National Demurrage Rules. 90% at least of its traffic is

furnished by the owning industry, and if the mill was not there the railroad would not be there. Practically all of the short line's demurrage accrues against the owning industry (Tr. 2315). I tried to get some figures on what would be the financial status of the railroad if it applied the National Demurrage Rules to the owning company, but I could not get much out of it (Tr. 2316). I said that straight [fol. 409] per diem would cost $2 a car in car hire because that is the average detention on cars from the North Western. The $2 only applies to cars to and from that road. It is hard to tell whether the $3 charge the road gets is a division or a switching charge. The Commission called it switching service. It is a Tap Line division (Tr. 2317). That road is about 8 miles long altogether.

The Lee County Central Electric Railway operates from Amboy, Illinois, where it connects with the Burlington Railroad, 13 miles north of Middlebury (Tr. 2318). Principal operation is between Amboy and Lee Center, 3½ miles north. The road was built in 1910 as an electric railroad, but this operation was discontinued during the War. The road is now kept alive by the present manager who operates an elevator at Lee Center. The one locomotive belongs to this man. The road is owned by farmers in the territory and is now practically in the status of a receivership. It publishes a local freight tariff on certain commodities, all revenues under it being in addition to the Burlington revenues to the junction (Tr. 2319). The rates are published on a per car basis. Since June, 1926, the Burlington has allowed it 3 days' free time on cars, with per diem thereafter. The Burlington operates only tri-weekly freight service on the branch which connects with this short line, which does not affect the per diem but causes the short line extra expense to secure empties (Tr. 2320). The gross revenue of this railroad is about $5,000 a year. It files no reports with the Commission nor does it file its tariff. It has no demurrage tariff, but it is a common carrier since it transports carload freight in interstate traffic. The one locomotive is owned by the man to whom I referred and who also has a first mortgage on a railroad (Tr. 2321). The farmers built the railroad but it did not work out so well. Its tariff I referred to is on file with the Illinois Commission but not with [fol. 410] the Interstate Commission. I have no very defi-

nite information on the car hire arrangements between this road and the Burlington but the short line pays about $50 a month in car hire (Tr. 2322). The Burlington shows it as being allowed 3 days' free time with $1 a day thereafter, but I do not know that that arrangement was ever in effect. The Burlington said that it was not their desire to charge any car hire. I don't remember what Burlington official told me that.

The Fox & Illinois Union Railway is an electric railroad connecting with the Burlington (Tr. 2323) at Yorkville, Illinois, and running south 20 miles to Morris, Illinois, where it connects with the Rock Island. It is a freight carrying electric line. The road has two passenger electric cars and one freight locomotive. It was built in 1911 and electrified in 1913. It is owned by individuals along the line and is primarily an agricultural railroad (Tr. 2324). In 1926 about 1250 carloads were handled, of which 1144 were outbound. It has a straight demurrage basis of car hire with the Burlington and Rock Island and pays practically no car hire. On straight per diem it would pay about $4,000 a year or 10% of its gross freight revenue. It does not subscribe to the per diem rules. It performs some switching for the Rock Island at Morris, at $6.30 a car, which is absorbed by the Rock Island. There is no car hire on this service (Tr. 2325). This switching is terminal switching but there is no per diem or reclaim. No car hire at all is paid, and the switching charge is absorbed by the Rock Island (Tr. 2326). If the road paid anything in car hire in 1926, it was very little. It has no interchangeable equipment and is on a straight demurrage basis with both the Burlington and Rock Island (Tr. 2327). It also connects with the Illinois Traction System on a straight per diem basis, but the interchange is so negligible it requires no consideration.

[fol. 411] The Benton Harbor, St. Joe Railroad is an electric line operating from Benton Harbor, Michigan, 15 miles north to Watervliet and 25 miles south to Dowagaic, Michigan. It is controlled by the Benton Harbor, St. Joe Railway & Light Company. I have a map showing the railway.

(Said document received in (Tr. 2329) evidence as Exhibit No. 191.)

It connects with the Pere Marquette at Coloma, the Big Four at Eau Claire and the Michigan Central at Benton Harbor. Its average haul is 6 miles with the Pere Marquette, 10 miles with the Big Four, and 1 mile with the Michigan Central. It receives $10 per car on traffic to and from the Pere Marquette and Big Four and $7 a car on traffic to and from the Michigan Central. These charges are added to the trunk line rates. Exhibit 13 does not cite this road correctly. It is on a straight demurrage basis of car hire with the Pere Marquette and Big Four and on a plant facility basis with the Michigan Central which collects demurrage direct from shippers and receivers on the electric line (Tr. 2329). The road does not file a demurrage tariff on traffic to the industries at Benton Harbor. They do apply a demurrage tariff but not to the industries where they switch on the $7 charge. The Michigan Central collects demurrage direct from those shippers. The road is on a straight demurrage basis of car hire with the Big Four and Pere Marquette (Tr. 2330) and collects demurrage itself from those shippers and consignees. The road is a heavy passenger line and owns the street car lines in Benton Harbor and St. Joe. It is really a public utility organization (Tr. 2331). It files reports with the Interstate Commerce Commission.

The Southern Illinois Railway & Power Company is an electric railroad operating from Eldorado, Illinois, 15 miles to Carriers Mills, Illinois, through Harrisburg. It connects [fol. 412] with the Illinois Central at Eldorado, has 8 electric passenger cars, 1 freight locomotive, and 1 freight express car. It also owns 25 freight cars, none of which leave its line (Tr. 2332). It interchanges freight with the Illinois Central at Eldorado and through it with the Louisville & Nashville. It is owned by the Central Illinois Public Service Company and handles about 1500 carloads of coal a year for it in local service. Its inbound interline traffic is of miscellaneous commodities. It is paralleled by the Big Four Railroad. It is not a subscriber to the per diem rules and pays straight per diem to the Illinois Central. It pays little per diem because it is able to return cars promptly. That condition might change, however, and the short line wants freedom to negotiate car hire with the Illinois Central to cover changed conditions (Tr. 2333). It applies

straight demurrage to its own shippers. It does not interchange any of its equipment which is used in local coal transportation. I do not know why the road wants to feel free to negotiate car hire with the Illinois Central. The Central Illinois Public Service Company is an important public service company and a very heavy shipper and receiver of freight (Tr. 2334). It is controlled by the Insull interests, which I think are the largest in the United States. I don't think that has anything to do with the desire of the short line to deal with the Illinois Central. My dealings were with the local superintendent, and I don't think he had time to get instructions from anybody (Tr. 2335). He wants to be free to make proper arrangements to fit changing conditions, but does not know now what he would want. Nothing is wrong now because they don't have to pay anything. If they had to pay too much they would want an equitable split (Tr. 2336). I am not able to say what they would want if conditions changed. The Benton Harbor, St. Joe Railroad does not interchange any of its equipment. [fol. 413] None of the railroads about which I have testified this afternoon belong to the American Railway Association or subscribe to the Per Diem Rules.

Examiner Rice: The next hearing at Ogden, Utah, September 24, 1927.

[fol. 414] Proceedings at Ogden, Utah, September 24, 1927

Examiner Rice: The Interstate Commerce Commission has set for further hearing at this time and place Docket No. 17801, Rules for Car Hire Settlement, and the various cases which have been consolidated therewith.

R. K. Brown was called as a witness and, being duly sworn, testified as follows:

I am Superintendent and Chief Engineer of the Salt Lake & Utah Railroad Company and have been in that capacity about 8½ years. Prior to then I did operating work for the L. A. & S. L. for 17 years (Tr. 2345). At that time I was attached to the Operating Department. I have prepared a map of the Salt Lake & Utah.

(Said document received in evidence as Exhibit No. 192.)

At Salt Lake City we have direct interchange with the U. P. and all connecting lines through the Oregon Short Line, as indicated on the map just below Salt Lake City. At our own terminals in Salt Lake City we connect direct with the Bamberger Electric Railroad. At Provo, Utah, we have a direct interchange with the D. & R. G. W., and through it with the Utah Railway (Tr. 2346). We have a limited interchange with the L. A. & S. L. at Ironton. Our passenger department folder will show relative distances on the railroad.

(Said document received in evidence as Exhibit No. 193.)

Provo is 48.4 miles from Salt Lake City (Tr. 2347) and is 18.2 miles from Payson. Ironton is 2.6 miles south from Provo. The interchange cuts down distances between Provo and Payson and adds to the distance from Provo to Salt Lake. From Ironton to Salt Lake is 51 miles. We have 98 interchangeable freight cars, but I do not know how many cars were interchanged with connections last year (Tr. 2348). I imagine it was between 8,000 and 10,000 cars out of an approximate total of 12,000. If we do not have enough of our own cars or enough foreign cars on our rails, we ask other roads which will get a line haul to furnish us equipment. On cars interchanged with the D. [fol. 415] & R. G. W. at Provo our detention averages between 3 and 4 days (Tr. 2349). We have about the same detention on cars received from the U. P. at Salt Lake City, and on cars from the Utah Railway and Western Pacific it would be about 3 days. I have made no study of the relationship between car detention on our lines as related to revenue and detention on other lines as related to revenue, but I think the proportion of detention on our lines is greater. Our operation is entirely electric operation. Our map, Exhibit 192, is not drawn to scale (Tr. 2350). Our freight business forms the greater part of our total business and produces between 55 and 60% of the total revenue, approximately. We have 6 freight locomotives operated by electricity, 18 passenger train cars of which 11 are motor cars (Tr. 2351). We also have 4 passenger trailers, one baggage trailer and two motor baggage express cars. The

line is standard gauge and capable of handling any freight business offered. With the exception of one grade, our maximum on the main line grade is 1½%. The exception is on a viaduct where we cross the D. & R. G. W. and does not limit our operation (Tr. 2352). Since 1920 our passenger business has been on a decline but with some irregularities the freight business has been increasing since 1912. The bulk of our business is now freight. I have no exact figures on the division of the business as between interchange and local business (Tr. 2353), but I think our interchange business is 75% to 80% of the total. Generally, the freight business is constantly increasing and the passenger business is decreasing. I see no reason to expect any increase in the passenger business. We have made special effort to increase our freight business and have been fairly successful. The car service questions are constantly becoming more important to Salt Lake and Utah and will continue to be important (Tr. 2354).

Cross-examination:

Our 98 cars are interchanged with connecting lines at times (Tr. 2355). My statements as to car detention were [fol. 416] based upon general knowledge and are approximate figures. The figures I gave on number of cars interchanged were for 1926 when we interchanged 8,000 or 10,000 cars out of 12,000 handled; that is an estimate. The 3 or 4 days' detention I referred to was also an estimate, which is generally true in every period (Tr. 2356). I could not be more specific as I have not studied the question. It was approximately true in 1926. What I have said with respect to detention on D. & R. G. W. cars would be true of the other roads. I absorb some ideas on detention but have no complete figures. On long-haul journeys of carload business, I think there is a greater proportion of time (Tr. 2357) of cars on our line with respect to length of haul or with respect to revenue than on connecting lines. It usually takes us 4 days on a car from the U. P. or D. & R. G. W. which we haul 50 miles. They would probably haul it 1500 miles in 10 or 12 days. We might only have 2 days, although the consignee or shipper has that much free time. I have no definite knowledge or figures for the conclusion I have reached (Tr. 2358). I do not have precise figures on how long the cars are detained or the relationship between detention and revenue. I have only a general idea. My

statement on the relationship of freight interchanged to total business was also an estimate based upon analyses that have been made. I do not have any figures and cannot give them any closer than I have given. I think the proportion is between 78% and 80% (Tr. 2359). Our total first track mileage is 76 miles and we have 19 or 20 miles of yard tracks and sidings. We file annual reports with the Commission. The road is at present in receivership, but I do not know the owners of the stock. Quite a little of the stock is owned by patrons of the road (Tr. 2360). Our cars consist of 70 old steel gondolas, 14 steel hoppers, [fol. 417] 10 steel box cars and 4 steel flat cars. We have some other equipment which is not in condition for interchange and are used for work equipment and local traffic. We have a total of 725 freight cars. Most of our traffic is freight and a large proportion is inbound automobiles and accessories. Coal is probably our largest single commodity. It is also inbound (Tr. 2361). I am not supplied with information as to the running time of our cars from eastern points to Salt Lake by our connections.

S. M. OSBORN was called as a witness and, being duly sworn, testified as follows:

I am Auditor of the Salt Lake and Utah Railroad and have been for about 6 years. I have prepared an exhibit showing the earnings, revenues, etc. of the Company (Tr. 2362). It covers the period of 1926.

(Said document received in evidence as Exhibit No. 194.)

This exhibit is an income statement of the railroads showing rent of equipment, revenue and equipment expense separately. Our rent of equipment and revenue collected was about $4,879.22; whereas, we paid out as rent of equipment expense $40,250.20. We had a net loss on operation of $128,138.75 (Tr. 2363). Our freight revenue was about 65% of our total revenue. Since 1920 our passenger revenue has declined about 52% but our freight revenue has increased about 70% since 1914. Our total operating expense is approximately $607,000. The exhibit shows that we collected $612 in reclaims from other lines but paid out in reclaims $10,057.50 (Tr. 2364). In a case like this where a line has more cars switched for it than it switches for

other lines, a larger amount is paid in reclaims than is collected, and this is unfavorable, particularly because the cars are detained longer on our line in switching service [fol. 418] and the line performing the switching service receives the demurrage. I have prepared some figures showing relative revenue and per diem expense on our connections (Tr. 2365). The gross revenue of all carriers on traffic interchanged with the Oregon Short Line in 1926 was about $540,900, allowing for a deviation of a few dollars. Our revenue on that business was $80,200 in round numbers (Tr. 2366). The total per diem average days was 21,645 days and our per diem was 7,212, or about 37% of the total. Our revenue was 13.9% of the gross revenue. On the L. A. & S. L. the gross revenue on traffic interchanged was $295,200, our revenue $40,300, total car hire days 9,840, and our car hire expense or days 3,936 (Tr. 2367). I intended that to be the percentage of revenue and expense as to all lines. I have not shown it as to individual lines. On the D. & R. G. W. traffic the gross revenue was $1,052,700, our revenue $135,400, total car hire expense 42,108 days or dollars, and our car hire expense $14,036. On Western Pacific traffic gross revenue was $435,300, our revenue $60,500, total car hire expense $14,510, our expense $5,804. On the Utah Railway traffic the gross revenue was $147,600, our revenue $57,400, total car hire expense $13,128 (Tr. 2368), our car hire expense $6,564. On traffic with the Bamberger Electric the gross revenue was $401,600, our revenue $27,160, total car hire expense $7,540, our car hire expense $2,698. The total on all lines is gross revenue $2,873,300, our revenue $400,960, total car hire expense $108,771 and our car hire expense $40,250. We receive 13.9% of the gross revenue and paid 37% of the car hire expense (Tr. 2369). We picked 1926 because it was the last complete calendar year. I think it represents a fair average. The Salt Lake & Utah subscribes to the A. R. A. Per Diem Rules. This adds some additional work in making settlements as we have to settle with every car owner. The difference in expense, however, is not substantial. I have a statement of the financial set-up and capitalization of the [fol. 419] railroad (Tr. 2370). There has been no valuation of it by the Commission. Our book investment as of December 31, 1926, including only road and equipment, was

$7,966,013.57 and the capitalization was $5,043,700. Our stock ownership is largely individual. I know of no stock of any consequence that is held by an industry. Out of our total capitalization $75,000 of the stock is held by individuals, some of which live on the line (Tr. 2371). That is the first preferred stock. 3,000 shares of the common stock of $300,000 par value are also so held out of a total of $3,000,000 par value. The par value of the common stock is $100 a share (Tr. 2372). The remainder of the Company's stock is held by the Interurban Construction Company, the stock of which is held by some 25 individuals, but about 80% of its stock is held by Ordon & Company. As a practical matter almost all of the stock of the Salt Lake & Utah is owned by individuals who live in the territory but do not represent industries. They are scattered throughout the territory so that the stock is independently owned (Tr. 2373). The road has been in receivership since July 25, 1925 and the trend of our business has been downward. Our passenger revenue has declined and recently our freight revenue has declined because we lost some transcontinental freight traffic. We participated in that traffic as an intermediate carrier, but we got an unfavorable decision from the Commission that eliminated us (Tr. 2374). That was in I. & S. Dockets 2225 and 2458. On 1926 business that traffic produced about $80,000 a year in revenue. We participated in the westbound traffic and tried to get in as an eastbound carrier, but were opposed by the other roads who tried to eliminate us from the westbound traffic (Tr. 2375). With that exception the general trend of our freight business is up. In 1926 we handled carload traffic amounting to 12,308 cars and of that total we interchanged 10,800 loaded cars (Tr. 2376). I have already given the relation of [fol. 420] car detention to revenue on our line and foreign lines. One representative car moved from Chicago territory on February 10th. Out of a total freight charge of $405.31 we received $53.19 or 11.6%. The car was on the road 18 days. We paid $7 in car hire or 38.89%.

Cross-examination:

The income of $4,879.22, shown as "Rent of Equipment" in Exhibit 194 was per diem which we collected in 1926 on our cars when they were used by other railroads (Tr. 2377).

The item of "All other Revenue" came from express, demurrage and other special sources. It is all operating revenue. Our car hire expense of $40,250.20 was the total payment in 1926. About $1,000 of it was mileage paid on cars not subject to per diem. I do not have an exact segregation of the amount paid in mileage (Tr. 2378). We handled about 500 mileage cars for the two principal months and they traveled an average mileage of about 100 miles, or a total of 50,000 miles at 2¢ a mile. Our "Rent of Equipment" item under "Expenses," shown in Exhibit 194, includes reclaim payments, and our "Rent of Equipment" item under "Revenue" includes reclaim collections." Other deductions included with interest under "Expenses" represents uncollectible revenue (Tr. 2379) and miscellaneous fees paid. It amounted to about $16,000. Our total operating expense was $607,096.10 but I did not count taxes. Our net railway operating income would be ascertained by deducting the total of our rent of equipment, other operating expenses and taxes from $734,338.05, which leaves approximately $67,905.58 as net railway operating income (Tr. 2380). We only go into the red because we have included our interest on funded debt. I put our reclaim figures in to show that we pay more than we collect. This does not mean that there is anything wrong under existing per diem rules, but it is an unfavorable condition for us. We pay reclaim on an average detention of about 5 days, whereas our average detention is 3.7 days on cars handled in termi- [fol. 421] nal switching (Tr. 2381). The line that performs the switching for us gets the $5 reclaim. The D. & R. G. W. paid us $230 in switching reclaims for terminal switching performed by us, and we paid them $14.99 on terminal switching performed for us (Tr. 2382). We both get about the same reclaim period of about 5 days. The difference is due to the fact that they switch more cars for us than we do for them. There is nothing wrong in that if there is nothing wrong with the $1 per day charge. We collected more from the Bamberger Electric than we paid them, which was unfortunate for them, if $1 a day is not equitable to their line. If the $1 a day is right for the use of the car, this situation is all right (Tr. 2383). We collected money from the Utah Railroad and did not pay them anything. We should have collected the money from

them under existing rules, but I think there is probably a disadvantage to the line that switches the smaller number of cars. That results from the rule and from the fact that such a road does not switch as many cars. It results from the rule because of the $1 a day charge made while the switching carrier holds a car in switching service. The average detention is higher in that service (Tr. 2384) than when handled on our line. I am not proposing any remedy for this situation. I am just showing the fact that it produces an unfavorable condition on our road. The shortness of a line makes no difference in the reclaim, only as it relates to the relation of revenue earned on the line haul that is performed (Tr. 2385). When I referred to the detention of cars in switching service. I was referring to cars switched for us (Tr. 2385) by other railroads. The average detention on such cars by the switching line is about 5 days; whereas, on the cars we unload, locally, the average detention is about 3.7 days. We perform terminal switching at Salt Lake and are allowed the same reclaim as any other line under the per diem rules (Tr. 2386). We [fol. 422] are allowed the full time in switching service with a maximum average of 5 days, so that our line and other lines get back the per diem paid out on terminal switching operations. I did not say that more time was consumed in switching by other lines than is consumed by us. Our average detention of 3.7 days is on cars delivered on our own rails. If we bring a car to Salt Lake consigned to an industry on another railroad, it delivers the car for us, paying per diem direct and reclaiming it from us. On that service the detention is 5 days because there is more delay in getting through the terminals (Tr. 2387). The additional delay is due to the difficulty of the service. The one car I referred to in stating the relationship between per diem and revenue was hardly representative in computing per diem. On that car I started it 2 days prior to the date the car was waybilled (Tr. 2388). I took the advice of the Short Line Association on that, but 2 days' free is allowed under demurrage tariffs, and if it goes beyond that time demurrage is collected. I know nothing about the history of the particular car I spoke of. I do not know whether or not it was hauled into Chicago for the load under per diem (Tr. 2389). Frequently cars are brought in empty for

loading and in that case the carrier bringing it in pays the per diem while bringing it in. That per diem would be chargeable to the subsequent loaded movement and it happens once in a while. The total per diem on that car was $18 (Tr. 2390) which included 2 days prior to the time it was billed. It was in transit 18 days which included the 2 days I allowed for loading. We had the car 7 days and hauled it 48 miles during the 7 days it was in transit, being unloaded and returned. I show the total days from the time it was interchanged to us until we returned the empty car (Tr. 2391). It may have been in the process of loading more than 2 days, but I do not know what happened on this particular car nor whether demurrage accrued. If it did accrue I have not shown it. The total figures that I gave [fol. 423] with respect to each road include inbound and outbound traffic. In computing our per diem I started from the time the car was set for us for loading on outbound traffic (Tr. 2392). I mean by that, from the time it was placed on the interchange track. In the case of inbound shipments, I have allowed 2 days for loading. Our connection with the Union Pacific is at Salt Lake City (Tr. 2393). We would not necessarily get a Union Pacific car for a shipment to the Union Pacific at that point. We would get it on our own line or from the D. & R. G. W. at Provo. Some time elapses between the time we get the empty car and the time we set it at the shipper's plant, and I have included that per diem in the per diem chargeable to our road. On cars inbound to us under load, I allow 2 days for loading (Tr. 2394). I have not added any foreign-line per diem where the car is brought in empty for the loading. We interchanged 1803 cars with the Oregon Short Line in 1926, both inbound and outbound, and those were the cars upon which I made my computation (Tr. 2395). I did not deduct from the gross revenue on those cars any absorptions for switching. On the one car I mentioned the freight was $405.31 which was probably collected at destination. It included all freight charges. The waybill did not show the terminal charges in the City of Chicago (Tr. 2396). Out of the revenue received by the line hauling the car from Chicago, that road absorbed terminal charges of probably $3.60 or some small amount. In isolated cases, the charges might be brought up considerably. The revenues that I have

stated represent the gross freight revenue paid by the shipper for transportation, and this revenue was distributed in the fom of divisions or switching absorptions (Tr. 2397). I do not know how much a road like the North Western charges for terminal service in Chicago. Only a few charges are made per hundred pounds. I think the average usually runs about $5 a car. Whatever they are would constitute a deduction from the revenue of our con-
[fol. 424] necting line (Tr. 2398). I also realize that the revenue of the connecting line would be further depleted by the payment of per diem reclaims to the Chicago switching line. In connection with the Oregon Short Line Traffic, the revenue of $80,200 which we received was for inbound and outbound traffic delivered on our rails, without any decrease for absorptions or otherwise. The balance which accrued to the connecting lines would be depleted by a slight amount on a considerable part of the traffic (Tr. 2399). To the extent that a deduction exists, the balance of the revenue accruing to other lines would be reduced. In my judgment it is insignificant. That would be true on whatever cars I mention and on which it occurred. On inbound traffic, I have included the per diem from the time the car was set up until the time it was returned to the connection, and have done that in the case of outbound traffic delivered on trunk line connections (Tr. 2400). On the outbound traffic, we have considered the time the car was released so far as was possible. On a car going over our line and the Union Pacific to New York, we do not know, certainly, when the per diem ends. For the transportation we allow the time that actually expires which we get from the records of the waybill in the settlement (Tr. 2401); I mean by that the interline settlement which shows when the car was delivered at destination. We cannot ascertain the date the car was released without considerable investigation, and we have not made that investigation in any detail. We have added the average amount of time that would be consumed to the time the car arrived at destination (Tr. 2402). We get junction reports when we turn the car over to the Union Pacific and if that car was delivered to the North Western, we would get a report of that delivery. We do not know when it was delivered and unloaded, but I say the figures are accurate for the reason that we

know what the per diem days are. There are considerable records showing deliveries on particular cars, but I do not [fol. 425] say that we ran down every car that went forward from our line (Tr. 2403). My figures represent both inbound and outbound traffic. On the outbound traffic we do not know in every case when a car is unloaded by a consignee. My figures, however, are not a guess as they are based upon an accurate knowledge of the average detention of cars (Tr. 2404). A car originating on the Salt Lake & Utah and going to New York City over the Union Pacific, Indiana Harbor Belt and Erie Railroad (we would have claim records on a number of cars) would be included in my computations. Claim records on a number of cars would show the date of delivery. If we do not have a claim we can get the date by writing to the delivering line, but we did not do that with respect to all cars on the Oregon Short Line (Tr. 2405). In getting the per diem accruals on the outbound traffic, we have taken some representative cars and secured the date the car is received by our line, and we compete the time that lapses from that date until the car reaches destination and add to that 2 days for unloading (Tr. 2406). By picking out a representative number of cars we get a basis upon which to compute the average detention on all forwarded traffic. That is what I have done. I have applied that average figure to the foreign line detention on the outbound traffic. I have no segregation between the total number of cars handled inbound and outbound over the various lines (Tr. 2407). I cannot say exactly how many representative cars I used to get the average figure, but I went over perhaps 20 or 30 outbound cars and found when they arrived at destination. I then added the 2 days. In that way I got an average figure for total car detention on the outbound traffic. I then got the foreign line detention by deducting our detention, which I knew exactly (Tr. 2408). Our outbound traffic goes to all destinations over varying lengths of haul, but the 20 or [fol. 426] 30 cars I picked out would be representative. For the most part our traffic goes to a destination comparable with the Missouri River District (Tr. 2409). We handled 1508 cars in local traffic in 1926 and used a small proportion of foreign equipment for that traffic. The fact that we earned $5,000 in that year on our own 98 cars would

not necessarily mean that our local traffic was handled largely in foreign equipment (Tr. 2410). Our road is a party to the National Demurrage Rules. Our reclaim figure is not on an arbitrary basis. It is made each month on the basis of the number of cars we switch. In this territory the actual reclaim method covered by Rule 5 of the Reclaim Rules is applied. We reclaim our actual per diem payments if they do not exceed an average of 5 days per car. The same rule applies to all roads in this district. In 1925 we had net railway operating income of $93,531.82 and we had a net deficit of $95,018.77. Our average haul is about 35 to 40 miles (Tr. 2416). It is about 1800 miles from Chicago to Ogden. The gross revenue received by our road on the traffic interchanged with other roads, and to which I referred, is free of switching absorption deductions, although if some of it is delivered to us at Provo, handled to Salt Lake and delivered on some other road, we absorb the switching (Tr. 2417). That would represent a deduction from our revenue. Our revenue is net after deduction of absorptions. Our revenue is computed as net freight revenue, and it seems that our switching absorptions were deducted (Tr. 2418). The revenue of the foreign lines is net revenue, except for the deduction of a few switching absorptions. So far as switching absorptions and other deductions are concerned, our revenue figure is net and the foreign line figure is gross. With respect to the Utah Railway, the total gross revenue which accrued to all railroads that participated in these hauls, is $540,900, of which we received $80,200. The figure we received is net revenue so far as switching charges are concerned (Tr. [fol. 427] 2419). The amount received by the connecting lines should be reduced by the absorptions made by any given line.

ALDON J. ANDERSON was called as a witness and, being duly sworn, testified as follows:

I am Traffic Manager of the Salt Lake & Utah Railroad and have been in the traffiic Department for 6½ years and have been with the railroad 11 years (Tr. 2420). Our line from Salt Lake City to Payson has been built since the steam roads were constructed; it is closer to the towns. We also

serve a number of industries that were in the territory when our line was built. We serve approximately 80 industries and handled our first car of freight in 1914. I think our line is located more advantageously to serve the territory than any of the steam lines. The road began operation to Provo in 1914 and the line to Payson was built in 1916, and the branch to Magna in 1917. We had some joint rates only with the Union Pacific and D. & R. G. W. in 1916 on certain traffic. We now participate in practically all rates to or from Utah commonpoint territory and also participate in Magna and Payson territories and on transcontinental traffic except as a bridge line (Tr. 2421). Our divisions vary according to the rates. Via the Union Pacific our basic per cent is 15% of the proportion west of the Missouri River. That division also applies via the D. & R. G. W. and on the Union Pacific north and northwest. Via the California lines our basic division is 17% with certain variations. Our average division on all interchange traffic would approximate something less than 14%. On traffic to and from points east of the Missouri River, our percentages are of the proportions left after the eastern lines receive their divisions. We have traffic to those points (Tr. 2422). In 1922, we handled 12,308 carloads, exclusive of switch loads and merchandise freight and 1306 carloads of miscellaneous freight. In 1926 we handled 1,039 cars of beets out of a total movement of 12,308. That is largely [fol. 428] a local movement originating and terminating on the line. This year the traffic will be double last year (Tr. 2423). The balance of our local movement is accounted for mostly by fruit and vegetables. I have negotiated our divisions with other lines and helped to fix them. I do not recall that car hire has ever been discussed in the fixing of divisions and do not think it has ever had any effect upon decisions made (Tr. 2424). I think that element has never been given much weight, if any, because we have a competitive situation which is the controlling factor in the making of our divisions. Our average haul in my opinion would be about 40 miles (Tr. 2425).

Cross-examination:

In 1926 we handled approximately 800 carloads of perishables out of a total of 12,308 cars (Tr. 2426). 20 or 30 cars

went off our line. Some of the potatoes and canned goods are handled in box cars, but all of the fruit and most vegetables are handled in refrigerator cars. Our perishable movement in 1926 was low. I would think that in 1926 750 cars of perishables were handled in refrigerator cars (Tr. 2427). Our first shipment under a division of a through rate was made, I think, in 1916. All of the agreements on our divisions were made subsequent to January, 1916, although one arrangement was made in October, 1915. We have been a member of the A. R. A. since January, 1915, and a subscriber to the per diem rules (Tr. 2428). We were a subscriber to the per diem agreement when all our divisions were computed. Our average division is something less than 14%, but even if a mileage prorate to the Missouri River gave us only 3.7%, I do not think our division is high enough (Tr. 2429). Mileage is only one of the elements in fixing divisions. We get a division of the through rate on practically all interline traffic, and on terminal switching which we perform on competitive traffic, our switching charges are absorbed by the trunk lines. That is not true on non-competitive traffic, but that practice, I [fol. 429] understand, is uniform all over the country. We absorb charges of $3.60 and $7.20 for two lines on some traffic. I don't know what proportion of our traffic is inbound and what part is outbound (Tr. 2430). In 1926, the D. & R. G. W. delivered us 150,000 tons and we delivered to them 15,000 tons. That is due to the coal business which is all inbound (Tr. 2431). I can illustrate my statement that competitive conditions, not affected by car hire, fixed our divisions by illustrating on the map put in as an exhibit. If a car moves from a point in Nebraska to one of our industries, it could move either via the Union Pacific to Salt Lake, then over our rails or over the Rio Grande to Provo, then over our rails (Tr. 2432). We were originally allowed, I think, 10% from Salt Lake City to Kirkham, which was the same division which the Oregon Short Line received. That is the origin of the 10% allowance. Later traffic grew and we got a line of rates with the Rio Grande enabling us to compete with the Union Pacific into Salt Lake City. The situation now is that a car from the East could move into Salt Lake, via the Union Pacific or D. & R. G. W. or could go U. P. to Ogden and Bamberger Electric to Salt Lake, or

it can go D. & R. G. W. to Provo, then over our railroad to Salt Lake, making four competitive routes. For these reasons we have been able to get the division bases which we have, which is the same via both routes (Tr. 2433). Our division structure is built up largely from cost of service and allowance already made to other lines in the territory for similar service. We receive 15% for a haul from Provo to Pleasant Grove, about 10 or 11 miles, and the same per cent if we haul 37 miles to Salt Lake. If our divisions were increased by some line, our inclination would be to favor that line with routing, but if they were increased the business would be worked via some other route (Tr. 2434). We [fol. 430] have hope of participating eventually in overhead traffic that we do not now handle. Last year we handled between 1,900 and 2,000 carloads of transcontinental traffic as a bridge line, and the time on our railroad was less than the 4 days average testified to. On one train load of automobiles it was only 6 hours from the time we received it to the time we surrendered it to the next line (Tr. 2435). On that traffic we might receive it and get it off the line without paying any per diem, and in some cases pay only one day which would average our per diem to a more correct basis. We do not have such a division on bridge traffic as we have on traffic to points on our own line. We get 9% or 10% of the west of the Missouri River revenue. We get switching revenue of $3.60 a car if the other line has a line haul. If the switching movement is a two-line movement in the terminal we get $4.05. For a local movement performed entirely by us we get $8.55 a car (Tr. 2436)

Examiner Rice: The hearing will stand adjourned. The next hearing will be at Portland, September 27, 1927 (Tr. 2437).

[fol. 431] Proceedings at Portland, Oregon, September 27 and 28, 1927

Examiner Rice: The Interstate Commerce Commission has set for further hearing at this time and place Docket 17801, Rules for Car Hire Settlement, and the various cases which have been consolidated therewith.

W. H. SOMERS was called as a witness and, being duly sworn, testified as follows:

I am Traffic Manager of the Pacific Northwest Traction Company, the Puget Sound Electric Railway, and the Tacoma Railway & Power Company (Tr. 2447). Exhibit 13 refers to the Tacoma Railway & Power Company as a plant facility on a demurrage basis. The Puget Sound Electric Railway is an interurban railway operating between Seattle and Tacoma. It is paralleled by four railroads with which it interchanges very little traffic. It is also on a demurrage basis, as neither it nor the Tacoma Railway & Power Company could afford to be on any other basis. The Tacoma Railway & Power Company is a street railway system in Tacoma. It handles no foreign railway cars on its street car lines, but some lines operate into the suburbs. Particularly one connecting with the Northern Pacific at South Tacoma (Tr. 2448) and operating to the Asylum at Steilacoom handles cars in interchange with the Northern Pacific. This business is not profitable to the Power Company and it would like to be relieved of handling the business. This would leave the Asylum without transportation, however. The Northern Pacific might deliver us one or two cars on a certain day. We have to send a motor five miles to South Tacoma light to pick up the car or cars and move them two or three miles, and then bring the motor back. The interchange is not heavy and the principal benefactors are the Asylum and the Northern Pacific. The Power Company is rendering public service at less than the cost and cannot afford to [fol. 432] have any car rental burden (Tr. 2449). The Asylum in question is a State Insane Asylum. The Puget Sound Electric Railway performs practically no function which the steam roads do not perform, since they are adjacent all the way. We do not interchange over 5 or 6 cars with them in a year (Tr. 2450).

Cross-examination:

The Power Company is a subsidiary of the Puget Sound Power & Light Company but is operated as a separate property. It is a street railway system in Tacoma and engages in freight business only to a limited extent, per-

haps $400 or $500 a month. I think the business to the Asylum is the only interchange business it does with the trunk lines (Tr. 2451). It amounts to very little in a year, ranging from 6 cars some months to 15 cars some months. It might run into 100 cars a year. Our line is the only one serving the Asylum and our only interchange is with the Northern Pacific. Our charges for the service are small and we publish our own tariff containing our local rates (Tr. 2452). The Northern Pacific does not absorb our charges which are filed with the State Department of Public Works. All the business is state business. Our car hire is settled on the basis of our turning demurrage collected over to the steam railroads. I think the situation is that the railroads themselves collect the demurrage but I am not sure of it. I have not given much thought to this situation because it is so trivial (Tr. 2453). We have a demurrage tariff on file with the Department of Public Works of the State of Washington. We do not regard the Power Company as anything more than a street railway system. I am inclined to think that we collect our demurrage on the interchange business (Tr. 2454). We have an electric locomotive. We pay no car hire to the Northern Pacific in addition to the demurrage which is collected. That is a verbal understanding, and we have had some discussion with the railroads asking them to relieve us of the business. [fol. 433] There is too much service to be performed for what it is reasonable to charge (Tr. 2455). I had not looked at it in the light of asking the Northern Pacific not to charge anything for cars because our rate is not high enough. We cannot afford to pay anything for cars, and if the Northern Pacific does not like the arrangement we would like to have them discontinue the interchange (Tr. 2456). I think we could make a showing to the State Commission so that they would not object. We have hesitated to do that because it would leave the Asylum without service. Our charges on this business vary according to the commodity. The principal commodities are coal, feed and hay, but I don't know what the charges are (Tr. 2457). I am sure that our rates are too low and we have seriously considered discontinuing the service. The haul is about 4 miles in each direction and all the business is inbound with an empty

return movement. I think we get the cars back within 4 days. Sometimes we have to run all the distance, about 16 or 17 miles, just to move the empties back, for which we get nothing. That is because we keep the motors where we need them and the business is not given us where the motor is (Tr. 2458). We would not want them to give us the traffic in Tacoma, but we would prefer that they did not give it to us at all. We are not blaming them for giving it to us at the interchange, but neither do we deliberately keep the motors 5 miles away from the interchange. We are not blaming the Northern Pacific, but I mention that to show why the business is not profitable (Tr. 2459). The Puget Sound Electric Railway is an interurban railway operating 36 miles between Seattle and Tacoma. It is paralleled by four railroads and the interchange with them is very light. We might go several months without having a car interchanged. The Electric Railway collects demurrage for detention over 2 days and remits that to the connecting railroad. That method of handling has continued for several years, I think, because the situation was [fol. 434] not important (Tr. 2461). In 1926 the interchange might have been from 7 to 10 cars, so small that it does not make any difference. We collect demurrage that accrues and turn it over to the trunk lines. If no demurrage accrues nothing is paid for car hire. The interchange is with the Northern Pacific, Milwaukee and Pacific Coast Railroad (Tr. 2462). The annual traffic amounts to 10 or 15 cars. We publish a demurrage tariff, and when we do handle cars we collect charges under our own tariffs. Our charges are not absorbed. The Electric Railway is an interurban electric line.

Direct examination:

I was employed for 14 years with the Great Northern (Tr. 2463) filling various positions since I was with the railroads. I spent 14 years as Traffic Manager for the Electric Lines for which I appear. The Pacific Northwest Traction Company is operated in two divisions, without any physical connection. One lies between Bellingham and

Mount Vernon, a distance of 28 miles. I have a map of the property (Tr. 2464).

(Said document received in evidence as Exhibit No. 195.)

This map shows the location of the Northern Division between Bellingham and Mount Vernon. We connect at Bellingham with the Great Northern, Northern Pacific and Milwaukee. The connections are shown on the map by numbers. We connect at various places with the Northern Pacific, Milwaukee, Great Northern, Puget Sound & Cascade and Puget Sound & Baker River Railways (Tr. 2465). I have a map showing the Southern Division of the Company.

(Said document received in evidence as Exhibit No. 196.)

The Southern Division operates between Everett and Seattle. The map shows by numbers the connections with the various roads (Tr. 2466) and the relative locations of those roads to our line. We have certain car hire arrangements with the Great Northern, Northern Pacific and Milwaukee.

(Said documents received in evidence as Exhibits Numbered 197, 198, 199.) (Tr. 2467.)

These agreements allow the Traction Company 4 days [fol. 435] free time, after which it pays per diem at $1 a day. If a car is loaded inbound and outbound an additional 2 days is allowed, making 6 days in all, the 2 days being for the reloading of the car. These agreements were applied retroactively to the date of the end of Federal control on March 1, 1920 and are still in full force and effect (Tr. 2468). I have a form showing how these car hire accounts are settled.

(Said document received in evidence as Exhibit No. 200.)

Q. Mr. Somers, I hand you the next exhibit and ask you to explain what it is.

(Said document received in evidence as Exhibit No. 201.)

The Witness: This is a statement of earnings and per diem data covering loads in joint haul traffic for 1926, divided as between inbound and outbound. 2261 loads were

interchanged with the large railroads, of which 53.7% were inbound. Our total earnings were $45,365.53, 51% being on the inbound traffic (Tr. 2469). The average revenue per load earned by our company was $20.06. Under straight per diem without free time we would have had to pay $8004.00, equal to 17.6% of our earnings and $3.54 a car. On the present basis we pay 3.1% or 62c a car. The figures are for the calendar year of 1926. The situation will be about the same for 1927.

Q. I hand you the next exhibit.

(Said document received in evidence as Exhibit No. 202.)

The Witness: This exhibit compares the number of system and foreign cars in loaded movement, including less-than-carload freight of joint haul traffic in 1926 (Tr. 2470). A system car is one owned by an immediate connection or its subsidiary, and a foreign car is one owned by any carrier other than our line. We handled 2261 loads, and system cars were 67% of the total. In Column 10 the first percentage of 9.3% should be 93%. The total at the bottom is what really counts (Tr. 2471). On inbound [fol. 436] traffic system cars were 55.3% and on outbound loads were 81%. The reason for this is that we return foreign cars as quickly as we can. If we have 5 cars and loading for 3, we pick out 2 foreign cars to be returned immediately. My next exhibit is a comparison of the present car-hire basis on this railroad and other bases that might be considered on the traffic of the year 1926 (Tr. 2472).

(Said document received in evidence as Exhibit No. 203.)

This also shows a total of 2,261 cars handled. On straight per diem we would have paid $8,004; on per diem with 2 days free we would have paid $4,054; on straight demurrage we would have paid $9,642; on mileage at 1½¢ a mile $2228.90; and on mileage at 2¢ a mile $2971.88. We actually paid $1409 or $6595 less than we would have paid under straight per diem. Straight per diem would increase our payments 468% and would absorb 17.6% of our gross joint haul revenue, whereas, we now pay 3.1%. On a carload of lumber, for example, on the straight per diem we might

originate the car and pay 17.6% of our revenue to our transcontinental connection for car hire. If it hauled the car 1800 miles to St. Paul and earned $400 on it (Tr. 2473) in ten days its per diem payments to a carrier that might own the car would be only 2½% of its revenue. This shows the inequality of any fixed rule applicable to all. The Pacific Northwest Traction Company owns 15 box and 64 flat cars, which is enough to take car of all our local business. We use no foreign cars in local business. The Northern Division hasn't paid its expenses and taxes for the last three years and the system as a whole barely paid all charges and depreciation (Tr. 2474). The application of straight per diem would not be fair to this railroad (Tr. 2476). Our theory is that straight per diem would be inequitable on our railroad and I propose to tell why. It does not take into consideration our short hauls and short revenue. We haul a car 10 or 20 miles on 10 or 20 mile revenue; whereas, a [fol. 437] transcontinental railroad might deliver a car to another railroad for a haul of 50 or 100 miles on 50 or 100 mile revenue. Either movement takes one day, but the wear on the car will be less in the first case than in the second. The division in the first instance is also less and the cost to the transcontinental line is smaller, but the transcontinental road charges the first road the same car rental as the second (Tr. 2477). It may charge the first road 20% of its revenue and the second one only 5%. Car rentals on short lines should be fixed to insure prompt handling and to penalize the road if the car is not promptly returned. On account of short hauls and revenues it is not feasible to fix a general basis fair to all. Large railroads should realize that short lines are originating business for them at less than they could originate it themselves, and that it would take at least 4 days for their own branch line movement (Tr. 2478). It is recognized that in this territory branch lines do not pay but are valuable as feeders. Short lines in this territory bear the same relation to large railroads as feeders do, and should be encouraged in the matter of car rental. They should be treated the same as other feeders, even though such others be branch lines of the other railroads. The transcontinental road might use 5 days in getting a carload off a

20 mile branch and 10 days more hauling it to St. Paul, involving a total per diem payment of $15. It would not be reasonable to assess the branch $5 for its service and the transcontinental haul $10 for its 1800 mile service. It would be assessing all of the shippers free time against the branch; whereas, that is a necessary allowance on the entire movement and would have been borne by the transcontinental part of the haul had the shipment been loaded at a junction point (Tr. 2470). The logic is the same whether the feeder be a branch or an independent short [fol. 438] line railroad. In many instances the short roads have the burden of hauling raw materials to mills at low rates, and the cost of the terminal service always incidental to the originating of freight falls on the short line. Since a shipper is allowed 2 days for loading and unloading, the short line should receive the same allowance. Straight per diem may work out between roads of large freight car ownership because it is reciprocal, but it cannot work out with a short line because the short line cannot own the necessary amount of equipment to equalize. The short line should also be considered as a help to the large railroad, but are having difficulty continuing that role (Tr. 2480). The two parts of our railroad are not connected physically. We filed a return to a questionnaire with the Commission sometime ago (Tr. 2491). This morning I said that we own 64 flat cars when I should have said 56, which makes our total equipment 71 cars (Tr. 2482).

(Answer to questionnaire received in evidence as Exhibit No. 204.)

The answer to Question 17 in the last exhibit is in error as during government control we paid 60¢ per diem a day with 2 days' free time. The equipment register is in error in reporting that we have 15 box cars and 64 flat cars (Tr. 2483). I have a statement from the operating officials of the Company that we owned 71 cars in 1925. The figure that I gave was correct in 1925.

Cross-examination:

The Tacoma Railway & Power Company, the Puget Sound Electric Railway, and the Pacific Northwest Trac-

tion Company are all subsidaries of the Puget Sound Power & Light Company (Tr. 2484). Their stock is all owned by the Light Company. They carry practically no freight for the Light Company, which has no plants located on their rails (Tr. 2485). We have a Pederman plant close to the terminal on the Tacoma Railway & Power Company, and we switch some freight over a short distance to it. I don't know whether we are still doing it. I know that in the past we have interchanged freight for the Pederman Company with the Milwaukee (Tr. 2486). On this traffic I think the [fol. 439] Milwaukee collects demurrage under our tariff. We cannot prevent them from doing that and we will not pay per diem. We would rather stop handling the business. We do not pay any on traffic to the Asylum either (Tr. 2487). I assume that the only way the Milwaukee could get anything for car hire on the Pederman traffic was to go in there and collect what demurrage they could. We took that position because we could not afford to pay per diem. There is no common operation between two parts of the Pacific Northwest Traction Company lines but there is a common ownership and it is operated as one company (Tr. 2488). One company owns and operates both pieces. Exhibit 204, as I have corrected it, correctly states our per diem arangements with our connections prior to June 20, 1924. The agreements put in as Exhibits 197, 198 and 199 were applied retroactively through this period. During that time we had a lot of heart to heart talks with the railroad representatives (Tr. 2489). We did not refuse to pay per diem during that time but it was held in abeyance. We were always willing to enter into a reasonable arrangement. Our connections were not trying during this time to get us to pay per diem. No demand was made but we tried to work out an agreement that would be fair (Tr. 2490). I don't remember that they ever demanded that we pay $1 a day per diem. I had charge of the negotiations myself. The representatives of the steam roads did not demand straight per diem, and we did not pay it but made it plain that we were not trying to escape payment of a reasonable charge. I deal with the roads individually and jointly (Tr. 2491). The agreement was not reached with all roads at the same time. Directly after Federal control, the roads called me and asked if we would meet with them. A date was set and all railroads attended. It was decided

that we were to accumulate certain statistics and the railroads were to gather certain statistics which were to be submitted at the next meeting (Tr. 2492). When our fig-
[fol. 440] ures were gathered, I advised the chairman. Later I asked why the meeting was not called and was told that the Commission had made some decision which changed things. I told them we were ready at any time, but nothing happened for a long while. Later the Assistant General Superintendent of Transportation of the Great Northern asked me if there wasn't some way we could settle it, and I told him that we would welcome such a settlement (Tr. 2493). I told him that if they would put themselves in our position it would not take five minutes to settle. I went into it with him and he said he would go back to St. Paul and lay the situation before his chief. Three weeks later he came to see me and said that he would allow us 4 days' free time if we would pay $1 a day for detention thereafter. I said that was agreeable to us, so we dictated an informal agreement setting out the terms. On a load both ways we were to be allowed 2 more days, making 6 in all (Tr. 2494). This discussion took place just before the date of the agreement. We all signed the agreement, and since then there has been no per diem discussion with the Great Northern. We have been satisfied, and so far as I know they are satisfied. I have a letter from the Assistant General Superintendent of Transportation of the Great Northern with which he enclosed copy of the signed per diem agreement and said that he was sure it would be agreeable and that if he could be of assistance in the future to advise him. I never mentioned 4 days' free time, but talked on the basis that as a feeder line we should have enough time to originate the business with a penalty for time beyond that (Tr. 2495). The Great Northern is willing to allow that because they apparently felt it was a fair arrangement in consideration of our originating business for them and the cost. I never said anything to the Northern Pacific until their representative called me and asked if he could not make
[fol. 441] the same arrangement the Great Northern had. I said we could and took a copy of the agreement over to him (Tr. 2496). He said he would recommend it to his people. I left a copy of the agreement with him and the next thing I got was the agreement I filed. The procedure with the Milwaukee was just the same. Both it and the

Northern Pacific came to us. They did not execute the agreements without discussing them, but after discussion they signed them (Tr. 2497). On Exhibit 201, I figured that if we had cars 8004 days, we would have paid $8004.00. The time was computed under A.R.A. rules. I think that a percentage of per diem to gross earnings of 17.6 is big for us and that we ought to have some relief as it shows there is a burden in originating the business that does not apply to the transcontinental haul. I don't know that the percentage of per diem to gross earnings of trunk lines generally is more than 17% (Tr. 2498). I don't know anything about that. I can figure out where the Great Northern on a transcontinental haul would pay from 2 to 4% as against our 17.6%, and that does not seem fair. In getting our percentage we produce an average detention of almost 4 days on an average haul of probably 15 miles or a little less. It takes us one day to move the car in, two days free to the shipper and one day to get it back. That is about the quickest it can be done (Tr. 2499). 15 days could be allowed to the Great Northern on a haul to St. Paul with 2 days for unloading, and it would not make much difference in the comparison. To get the 2% I referred to, I figured that they got $400 on a car. Our average revenue is shown as $20.06. In getting percentages it would be fair to use the Great Northern revenue on the business we interchange with them, but I have used the average on all the business we do (Tr. 2500). If we used our actual average it would not make much difference, but I did not do that because I did not think it would make much difference. I don't know how much demurrage we collected on the 2261 cars shown [fol. 442] in Exhibit 201, although it would be proper to credit that demurrage against the per diem expense. We collect and retain our own demurrage, but I think there is very little of it, although I am not sure (Tr. 2501). We have a situation at Bellingham where we do collect a lot of demurrage, but we would have to have an analysis of that to have figures that would be of any advantage. Exhibit 204 includes our purely local business (Tr. 2502) and we sometimes have heavy demurrage bills on it. The 2261 cars are the foriegn cars on our rails in 1926 on which we paid $1409 in per diem which is about 62¢ a car (Tr. 2503). On Exhibit 203, the computations are in accordance with A.R.A. rules. We perform some terminal switching service

and get a switching charge for it. Exhibit 204 shows that we handled 215 cars in terminal switching service, on which we received some small revenue, but we paid no per diem on those cars (Tr. 2504). We have no objection to showing that revenue, but we paid no per diem on those cars. I don't know whether the agreements refer to switching but we just don't pay per diem on cars handled in switching. I don't think we would pay per diem on a car handled more than 4 days but it is rare that a car is handled that long (Tr. 2505). We handle no local traffic in foreign line equipment and did not in 1926. I am quite sure we have no inbound company material. If we did it would come in foreign cars and per diem on them would be handled under these agreements (Tr. 2506). The milk and canned goods shown in the answers to questions 18 and 19 in Exhibit 204 amounted to 73 carloads in 1926 out of a total of 2261. That traffic moves in refrigerator cars in the winter and those cars are included in the 2261. They move on a per diem rate (Tr. 2507). I think they are mostly Great Northern refrigerators. We take what the railroad gives us. I am quite sure we have no mileage settlements on refrigerator cars. A lot of our traffic is handled on a division of through [fol. 443] rates and a lot on local rates. Over half is on the divisional basis and the balance on the local basis (Tr. 2508). Our local rates are added to the junction point rates and there is no absorption of them. On terminal switching service we get a switching charge under our own tariff which is not absorbed by the trunk line. In every case our local rates are added to the junction point rate (Tr. 2509). Our road has not been valued by the Commission that I know of. It is an electric line. Practically all of the cars loaded inbound are given back with the load outbound. The empty movement is inbound and the heaviest loaded movement is outbound, so cars given us under load are returned under load (Tr. 2510). Between the end of Federal control and 1924, when our per diem agreements were made, I think we received per diem bills but was told by the local representatives to forget them. The bills came from St. Paul or Chicago and were so big they did not worry us. They put us on a straight per diem basis. It seems to me I saw one bill that was on a demurrage basis, and I asked what it meant. The local man would tell me not to worry about that (Tr. 2511); that he would fix it when they got to it, so

we did not even answer it. The agreement with the Great Northern provides that in some instances cars may be held for prospective loading free of per diem until placed, and that frequently happens. We serve a mill at Larson which is also served by the Milwaukee and Northern Pacific. They keep strings of cars available to the mill so that the clerk can go out and pick out any cars he wants and get them in the afternoon. The Great Northern realized they were losing business and came to us. We said that we could not store them as it would run up our per diem bills (Tr. 2512) but that we would build tracks to hold the cars, so we did. We spent several thousand dollars building storage tracks at the mill, and at the Great Northern's request they turned cars to us and we hold them on that siding [fol. 444] instead of having the Great Northern hold them seven miles away. We count time on them from the time the mill orders them. Such cars are included in the 2261 on Exhibit 201. The time those cars were held, however, is excluded from my figure of 8004. I don't know what the time the cars were held for loading would amount to, as we always have some cars on the track (Tr. 2513). I think that arrangement enables us to furnish more prompt service, and the transcontinental roads seem to think it is good business practice. We paid for the track and did not ask the Great Northern to pay any of it, as it also helps us to get business (Tr. 2514). This one plant is the only place I can think of where we hold cars for the Great Northern for prospective loading. The other agreements also have the same clause, but I thing it is inoperative. I can't think of any place where it has been operative (Tr. 2515). Under this arrangement we save, 1, 2 or 3 days in supplying cars to the shipper. To order the cars from the Great Northern, have them put on our interchange and get them to the mill might be only one day, sometimes 2 or 3. The mill uses flat cars, box cars and gondolas.

P. C. EICHHORN was called as a witness and, being duly sworn, testified as follows (Tr. 2516):

I am Treasurer and Assistant Secretary of the Seattle & Rainier Valley Railway Company. I have a map of the railroad.

(Said document received in evidence as Exhibit No. 205.)

Our track extends from Third and Steward Streets in Seattle, out Fourth Avenue (Tr. 2517) and Dearborn Street to Rainier Avenue, from Rainier Avenue to Columbia City, Hillman and to Renton 12½ miles. We connect with the Northern Pacific and Pacific Coast Railway at Renton. Those are our only direct connections but through them we interchange with the Great Northern, Union Pacific and Milwaukee (Tr. 2518). Our interchange traffic is mostly wood, coal and lumber. The coal moves inbound to nine con- [fol. 445] signees and we have one hay dealer. I have a financial statement for 1926.

(Said document received in evidence as Exhibit No. 207.)

We operate something over nine miles in the city limits and 2.9 miles in the county. It is practically all street car service with no short lines (Tr. 2519). Our entire freight revenues are derived from charges named in our local tariff, of which I have copies.

(Said document eceived in evidence as Exhibit No. 207.)

None of our charges are absorbed by our connections. The statement of our per diem arrangement in Exhibit 13 is not exactly correct. We have a demurrage basis with the Northern Pacific and also with the Pacific Coast Railway. We also have a car hire basis with the Great Northern, Union Pacific and Milwaukee (Tr. 2520). We are classed as consignees and have 2 days' free time from two connecting roads. We have the same agreement on our own cars with our consignees, but we allow only 24 hours to load or unload on foreign cars. We allow 24 hours from the time the car is placed on the consignee's spur by us. We own 5 freight cars and some sand and gravel cars, which are switched about ¼ of a mile on the other roads to some fuel companies (Tr. 2521). When our cars are on the lines of our connections, we collect per diem on the same demurrage basis with 48 hours' free time. After the 2 days' free time the charge is $2 for the first 4 days and $5 thereafter. We have 19 freight cars and 34 passenger cars and our line is an electric line. We are not exactly satisfied with our present car hire basis but it is the best we have been able to get. Sometime ago we tried to get an extra day so as

to allow our consignees 48 hours (Tr. 2522) but it never materialized. Since we are a switching line in a switching district, and switching lines are allowed reclaim, our free time should not be taken from us. We might get it by joining the A.R.A. but we could not afford the expense. We are now substantially on a reclaim basis. Since our freight charges are local, I do not see why we should be charged [fol. 446] per diem when our connections allow their shippers the demurrage basis. We are now on a demurrage basis, and we prefer this arrangement which we do not want changed (Tr. 2523). Had we been on straight per diem in 1926, our car hire would have been about $2,000 or 12½% of our gross freight revenue. We have no less-than-carload traffic. I understand that if our rates were on a car basis, in a switching tariff, we coul get a reclaim, but we cannot afford the expense of car accounting with car owners all over the country. If we could be relieved of that expense to the same extent that other switching lines are relieved, it would be satisfactory to us. I may have misstated that the switching lines do not have to settle with car owners (Tr. 2524). I haven't heard anything of that kind. We object to becoming a subscriber and getting a reclaim because we would have to employ one more clerk to handle the accounting, and we can't afford to do it as we are now operating in the red.

Cross-examination:

Our line is principaly an electric street car system. The freight operation is important in a small way. It is not particularly important compared to the total (Tr. 2525). Our road is not owned by any industry served. We handled 939 foreign interline cars of freight in 1926. In saying that our per diem bill would have been $2,000, I allowed $2 for each car. We get 2 days' free time under our demurrage basis of car hire and allow the consignee 1 day (Tr. 2526) so that we will have a day to perform our service. Our per diem payments in 1926 were $1737 on the 939 cars. Our demurrage collections were $1,538, which included per diem paid for the use of our cars. From the signs, I don't think we collected anything from connecting lines (Tr. 2527). On Exhibit 206 the operating expense items listed are in addition to the railway operating expense shown at

the top of the page. The figure of $99,200.53 is not operating revenue, but those items would have to be deducted to get [fol. 447] net profit. Our direct railway operating expense, which includes car hire, was deducted from the revenue, leaving a balance of $99,200.53 (Tr. 2528). To get our net railway operating income, we would deduct our taxes from that figure. Our total tax expense in 1926 was $41,973.94, which included some interest on deferred taxes. That figure and some other deductions should be deducted from the $99,200.00 to get our net railway operating income (Tr. 2529). The other figures I mentioned amount to $12,767.63 but they are not chargeable to operating expense under the Comimssion's classifications. Our net railway operating income in 1926 was $57,226.59 (Tr. 2530). To get a figure that might be used in computing a rate of return, there might also be deducted $12,767.63. Our book investment in 1926 was $1,452,000 from which depreciation should be deducted but not bond interest. Our present basis of car hire has been in effect since 1917 without change. Our freight traffic is almost entirely inbound. Sometime ago we shipped a few cars out, but now it is all inbound (Tr. 2531). The only commodities we hauled in 1926 were coal, wood, lumber, hay, sand and gravel. We allow our shippers 24 hours free from the time the car is placed on the spur. If we place a car at 12 o'clock noon, the 24 hours begins then, and at the expiration of that period we assess $2 a day per car. On the Northern Pacific and Pacific Coast our free time begins at 7 o'clock in the morning on a car placed before then (Tr. 2532). That time is computed under the demurrage rules. Our line is entirely within the switching district of Seattle (Tr. 2533).

E. H. KINKER was called as a witness and, being duly sworn, testified as follows:

I am Vice President and Manager of the Washington Western. I have a map of the railroad.

(Said document received in evidence as Exhibit No. 208.)

The line runs from Machias, Washington, where it con- [fol. 448] nects with the Northern Pacific, through Three Lakes to Woodruff where it connects with the Great North-

ern and Milwaukee. It has a total mileage of 11.12 miles (Tr. 2534). The bulk of our outbound traffic originates at Three Lakes and consists of forest products. Three lumber companies ship most of this traffic. Two logging roads have trackage rights over part of our line on a train-mile basis. We operate no passenger service. Substantially all of our capital stock is owned by the Three Lakes Lumber Company which in 1926 furnished 50% of the traffic. I think we are classed as a tap line and that our divisions are on the tap line scale. I don't think they are fixed by the Commission but are arbitrarily fixed by our connecting lines. I have a financial statement for 1926 (Tr. 2535). (Said document received in evidence as Exhibit No. 209.) In that year we handled 714 carloads, 687 outbound and 27 inbound. Forest products was the principal outbound commodity and fuel oil the principal inbound commodity. We seldom have a car loaded inbound and outbound. Exhibit 12 correctly shows our car hire basis as far as it goes, but in addition to what it states we are allowed storage privileges on cars held for prospective loading (Tr. 2536). Our connecting lines keep our interchange tracks filled with empties which are not charged to us until they are wanted by shippers. When cars are plentiful we have been asked to store some for the connecting lines' convenience. There is no arbitrary rule and conditions are met as they come. The Northern Pacific is now giving us a regular supply of 10 cars to be held for prospective loading. We do not always have to have that many, and if there is a real car shortage we would expect to inconvenience ourselves to help the situation. The Great Northern asked us to limit our stored cars to those of their own system, and we never hold foreign cars from them. In 1926, 93% of the cars we received were cars of our connections, which I would say was normal. Some railroad ma-
[fol. 449] terial is loaded in foreign cars because such material is loaded in the equipment of the loading line (Tr. 2537). We have the same basis of per diem settlement with all connections. It has been in effect with the Great Northern and Northern Pacific since January 1, 1924. Prior to then we were on a demurrage basis with the Great Northern. With the Northern Pacific we were on a demurrage basis from July, 1920, to January, 1924, and prior to July, 1920 on straight per diem. We have been on the present

basis with the Milwaukee since January, 1925, prior to which date we were on straight per diem with no free time. We are satisfied with our present arrangement and it is satisfactory to our connections. I have prepared a comparison of car hire costs for 1926 (Tr. 2538) (Said document received in evidence as Exhibit No. 210). In 1926 we handled 714 cars and paid no per diem and $2.16 in mileage. With average detention of 3½ days per car, we would have paid about $2500 on straight per diem or 19% of our interline freight revenue. We apply the regular demurrage basis to our shippers and in 1926 collected $8 in demurrage. Our average detention is 3½ days because we operate only one locomotive and this only part time. We take a car from the interchange track and spot it for loading, and the shippers' free time begins the next day. If he takes the full time we are not able to pick it up until the 4th day as we do not run a night train. Our maximum load outbound to Woodruff is 4 cars on account of grades and curves, and we only make trips on alternate days to Woodruff and Machias (Tr. 2539). Economic operation is necessary because of limited tonnage. The alternate day operation is due to the fact that Three Lakes, where most of the outbound freight originates, is between two junctions. If we had enough volume to make economical operation for one engine, we could probably get along with less free time. The railroad will not operate more than 18 months more unless some other industry is developed as the timber will be cut out by that time. From 1919 to 1926 [fol. 450] our outbound traffic has decreased from 2007 cars to 687 cars. From 1920 to the first seven months in 1927 our operating loss has ranged from $850.00 to $16,000 a year. Our showing in 1927 was better because we made arrangements with a logging line to use our engine and crew half time (Tr. 2540). None of the losses named include interest charges and only a nominal charge for depreciation.

Cross-examination:

The Three Lakes Lumber Company is the only one interested in the railroad and there is no connection between the lumber companies. Practically all of our traffic is outbound and consists of foreign products. It mostly goes to

the East (Tr. 2541). The bulk of the lumber movement is to Dakota, Minnesota, Nebraska, Kansas, Illinois and Missouri. For the last 5 or 6 years, I think the Northern Pacific has handled 40% of our traffic and 60% was divided between the Great Northern and Milwaukee. We have made no difference in the routing of traffic on account of the various per diem arrangements. That feature has never made any difference in the past (Tr. 2542). We do not have the average demurrage agreement in effect with shippers but apply straight demurrage of $8 a day after the first two days, then an increasing scale. The $167 in demurrage shown in Exhibit 209 was not collected. It was found to be an error and there was only $8 collected. We had average detention of 3½ days and only collected $8 in demurrage under the handling that I explained (Tr. 2543). It practically works out that we deliver on the fourth day so I think that 3½ days is a fair estimate. All of the cars were handled very regularly by the shippers, and I don't know of any case where a great deal of time was taken in loading (Tr. 2544). The storing arrangement gives another advantage, for if we have the right kind of a car we don't have to wait and can give it to the shipper that much sooner. Our car hire arrangement saved us $2500 in 1926. Our deficits are paid by the Three Lakes Lumber [fol. 451] Company which would also get any profit. By reducing our car hire $2500 in 1926, we reduced the expense of the Three Lakes Lumber Company in operating the railroad by that amount (Tr. 2545). We have a few cars for our own use but do not interchange them. We could reduce our detention if we operated oftener, but we cannot do that with our volume of traffic. More frequent operation would eventually cost the lumber company more money, so they pay it and make it up by getting a $2500 saving on car hire from the trunk lines (Tr. 2546). Our average haul in 1926 was 5 or 6 miles. Our freight revenue in Exhibit 209 accrued almost entirely from the 714 cars we handled. I don't know what the regular tap line allowance is but I think it is based on divisions. I figured that we got around $17 a car for our 4 or 5 mile haul (Tr. 2547). On the outbound traffic our revenue would be $17 or $18 a car. The through rates on our lumber were fixed by the Commission but it did not establish the division. In addition to paying those rates, the Three Lakes Lum-

ber Company was paying the deficit in the operation of the railroad (Tr. 2548). The railroad collects its allowances as divisions of through rates and is a party to the tariff. Whatever is paid us is paid us as a division. We bill cars through to destination. The delivering line collects. In two cases we have junction settlements and in the other case the delivering line settles with us for our division. All our revenue comes out of the through rate and we think we are a common carrier (Tr. 2549). We file reports with the Interstate Commerce Commission. In 1913 we were admitted as a common carrier. In 1916 the rates were disallowed. In 1919 they were again established. We have always operated as a common carrier, although from 1916 to 1919 no through rates were in effect. We must operate all year to handle our traffic (Tr. 2550). We almost always have cars on our line and we take them ahead of stored cars. In computing our average detention, I took the prospective loading feature into considera-
[fol. 452] tion. I have no figures (Tr. 2551). We paid no per diem in 1926. I think some accrued but we have never been billed with it and that is why we did not pay it. I think all three lines have a little something coming, although it is not very much (Tr. 2552). If the per diem that accrued and was not paid was taken into consideration, it would alter the figures in Exhibit 210 a little and would decrease our percentage some. I think the difference would be very small. I am not sure that we collected any demurrage in 1926 but there may be a little (Tr. 2553). Each road allows us 4 days' free time per car.

W. A. SCAIFE was called as a witness and, being duly sworn, testified as follows:

I am General Manager of the Waterville Railway Company. I have a map of the State of Washington showing this railroad.

(Said document received in evidence as Exhibit No. 211.) (Tr. 2554.)

On this map the railroad is shown at point "H-4". It connects with the Great Northern at Douglas, Washington

and runs 5 miles northwest to a stub-end at Waterville. It serves Waterville and surrounding territory of about 150 square miles. Waterville is the county seat of Douglas County and the center of a county embracing 600 square miles. It is a large wheat growing section. The main industries served by the railroad at Waterville are grain elevators, and warehouses, gasoline oil stations and fuel companies (Tr. 2555). When the Great Northern built its Mansfield Branch in 1909, the people were disappointed that it was not built into Waterville which was missed by 5 miles. The necessity for a railroad was so patent that the people organized and raised $80,000 in cash to build the Waterville railway from Waterville to Douglas. The Great Northern furnished the track material. I have a copy of our tie and rail agreement with the Great Northern.

(Said document received in evidence as Exhibit No. 212.)

[fol. 453] (Tr. 2556.)

The Great Northern owns the rail and the ties. The Waterville Railway Company has 78,388 shares of $1 each outstanding, which are owned by 196 stockholders, mostly farmers and business men. I have a list of our stockholders (Said document received in evidence as Exhibit No. 213) (Tr. 2557). I have a financial statement of the road for 1926.

(Said document received in evidence as Exhibit No. 214.)

This exhibit shows our assets, liabilities and other financial figures for the year 1926, with tonnage and commodity comparisons for the years 1923 to 1926, inclusive. Exhibit 12 does not correctly show our basis of car-hire settlement. The Great Northern allows us 3 days free on a load in one direction and 6 days free on a car loaded inbound and outbound, time being computed from the first 7 A. M. after the car is put on our interchange track (Tr. 2558). After free time we pay $1 per car per day to the Great Northern. This arrangement covers all cars and has been in effect since November, 1910. It is covered by a contract which I have here.

(Said contract received in evidence as Exhibit No. 215.)

Exhibit 214 shows that in 1926 we paid $76.35 in car hire and collected $50 in demurrage, leaving our net car hire at

$26.35. We also paid $2.10 direct to the owners of privately owned tank cars. We also publish a local demurrage tariff which I have here (Tr. 2559). It allows the same free time and penalty rates as are in the National Demurrage Rules.

(Said tariff received in evidence as Exhibit No. 216.)

Our average detention per car is 3 days. The Great Northern runs tri-weekly freight service and we operate on the same days. I am the only officer of the Waterville Railway receiving any compensation and am paid as an operating employe (Tr. 2560). We are satisfied with our present basis of car hire and are confident that the Great Northern is satisfied as they have not tried to make any change. We protest against Paragraph (B) of Rule 6 of the Per Diem Rules which is a menace to our present arrangement which we both find satisfactory. I have a state-
[fol. 454] ment of our 1926 tonnage by carloads.

(Said document received in evidence as Exhibit No. 217.)

I also have a statement showing comparative car hire costs for the year 1926 (Tr. 2561).

(Said document received in evidence as Exhibit No. 218.)

In that year we handled 402 carloads with average detention of 3 days and paid $76.35 in car hire and mileage. On straight per diem we would have paid $1,206 or 13½% of our gross freight earnings. We handled 15 tank cars. We receive a division of 3.9¢ per hundred pounds on grain to the Pacific Coast, which has been in effect since April, 1926. On other shipments only local rates apply. I have a copy of our local tariff (Tr. 2562).

(Said document received in evidence as Exhibit No. 219.)

Cross-examination:

On my Exhibit 218, I used 3 days detention per car as the basis for the estimated payment of straight per diem. I multiplied the 402 by 3. We run tri-weekly, and figure that it will take 3 days for a car to go in, be loaded or unloaded and come out (Tr. 2563). That is how I arrived at the 3 day average detention, as that is the way we handle all our equipment. We collect and retain our own demur-

rage. The stock of the road is owned by 196 business men, most of whom the railroad serves (Tr. 2564).

E. R. MORFORD was called as a witness and, being duly sworn, testified as follows:

I am General Freight and Passenger Agent of the Oregon Pacific & Eastern Railway Company (Tr. 2565). I have a map of the railroad.

(Said document received in evidence as Exhibit No. 220.)

The road connects with the Southern Pacific at Cottage Grove, Oregon and operates 21 miles east to a stub-end at Rujada, Oregon. Our line parallels the Southern Pacific for one mile between Cottage Grove and Latham. At Latham the Southern Pacific serves the Anderson & Middleton Lumber Company, our parent company, which is on the other side of the river from our track. Between Cot- [fol. 455] tage Grove and Rujada we have 16 non-agency stations (Tr. 2566). At Cottage Grove, we exclusively serve the Standard Oil Company and Shell Oil Company on a switching charge of $4 per car which is not absorbed. We have 5 important stations where we serve saw mills. At Culp Creek we connect with the logging railroad of the Anderson & Middleton Company and at Rujada we connect with another logging railroad of the same Company. I have here a copy of our commodity and distance tariff (Tr. 2567).

(Said document received in evidence as Exhibit No. 221.)

Our rates on lumber into Cottage Grove range from 3¢ to 5¢. About 85% of our entire revenue accrues from the movement of logs locally to Latham where they are floated across the river to the saw mill of the parent company. This company, the Anderson & Middleton Lumber Company, owns all of the stock and bonds of the railroad (Tr. 2568). That company furnishes none of our outbound lumber traffic. It is all produced by 6 saw mills which have no connection with the railroad or the Anderson & Middleton Company. The lumber of the parent company must be shipped out over the Southern Pacific. All of our interline tonnage except gasoline is outbound. The Lumber Company purchased the railroad in 1923 (Tr. 2569). Our aver-

age revenue per car on local traffic, constituting 85% of our tonnage, is $11.10 a car. For it we use our own logging cars, of which we have 56. We also have a box car and 11 flat cars, but none of them leave our line. We have one locomotive and use another belonging to the parent company and also own two gasoline motor cars. I think our lumber divisions are on the tap line scale. We were not a party to the tap line case, but the Southern Pacific said we were a tap line and that that allowance was the best they could do for us. Exhibit 12 correctly shows our basis of car hire settlement. We have had the straight demur- [fol. 456] rage basis for many years (Tr. 2570). although I understand that at one time we were allowed 3 days free by the Southern Pacific. The demurrage arrangement applies also on private tank cars. We paid no car hire in the first 8 months of 1927. Our demurrage tariff publishes the regular demurrage basis against shippers but provides that all foreign equipment furnished for loading to points off the railroad is supplied on condition that the shipper will assume the payment of the demurrage charges. This makes us whole on car hire. When demurrage accrues against the shipper the charges are advanced against the shipment and the car hire accounts of the Southern Pacific against us are balanced (Tr. 2571). This saves us the trouble of making extra entries in our records. In the first 8 months of 1927, our gross interline freight revenue was $3665.71 on 199 cars or an average of $18.42 per car. I think our average detention per car is now less than 2 days. It would be higher if 85% of our traffic was not in local log movement, for which we run regular trains which carry our interline carloads. If our local log traffic ceased we would abandon the road, as the interline traffic is too small in volume to pay expenses and the revenue from it only offsets about half of the train service payroll. We are not particularly interested in interline (Tr. 2572) traffic, but give the service because we are a common carrier. Our present car hire arrangement is satisfactory in a sense because it lets us out, but the shippers have to bear the burden. It would be better if we had free time enough to give our customers 48 hours free time. I have prepared a statement of operations with income, profit and loss for 1926 and for the 8 months ended August 31, 1927.

(Said documents received in evidence as Exhibits Numbers 222 and 223.) (Tr. 2573.)

Cross-examination:

I do not know whether or not the $24 a car that we received on our 135 cars of outbound lumber was more than the tap line allowance. That lumber was handled 3½ miles with the exception of about 15 or 20 cars which were hauled [fol. 457] about 15½ miles. The inbound gasoline is switched about half a mile. Our local log traffic (Tr. 2574) is hauled about 16½ miles. We get a higher average revenue on the interline traffic but the volume of the log movement justifies the lower rate on it. The logs move in solid trains daily (Tr. 2575). When the logging operations are suspended for a few days we had to make special trips with empty cars for outbound lumber loads. I would imagine that we interchange about 150 tank cars a year on which we settle on the demurrage basis (Tr. 2576). If the cars are not delivered back within 2 days, the Southern Pacific collects demurrage from the consignee. The charges are paid direct by the consignee to the Southern Pacific (Tr. 2577).

C. N. Huggins was called as a witness and, being duly sworn, testified as follows:

Examiner Rice: This road filed an answer to the questionnaire issued by the Commission and it is in the record (Tr. 2579).

The Witness: I am Vice President and General Manager of the Valley & Siletz Railroad. It was incorporated in 1912 and began operations in January, 1918. It owns and operates 41 miles of track between Independence, Oregon and Valsetz, Oregon. It connects with the Southern Pacific north of Independence, where a joint yard is maintained. The exact mileage is 40.06 miles (Tr. 2580). It owns 3 steam locomotives, 3 steel gasoline combination passenger and express cars and 25 freight cars, besides work equipment. The freight equipment is sufficient to handle local business, and we use no foreign cars for it. I have a map of the railroad. (Said map received in evidence as Exhibit

No. 224.) For 24 miles south of Independence the line runs through agricultural territory (Tr. 2581). The principal traffic from this country is from small saw mills and there is also some cord wood moving to Salem. The balance of [fol. 458] the railroad crosses the summit of the Coast Range of mountains, with heavy grades and much curvature. In addition to the curvature we have 3 miles of 1½% grade and 3 miles of 3% grade. These grades are not adverse to the traffic outbound but require the doubling of trains carrying empties. We also maintain a large number of trestles and bridges and there are heavy cuts and fills (Tr. 2582) making a heavy initial cost and maintenance expenditure. The line reaches timber which can only move to market over its rails. Our only connection is with the Southern Pacific Company. From 1923 to 1926, inclusive, our interchange with the Southern Pacific Company has ranged from 5049 cars to 7289 cars, about 98% of which is outbound lumber, logs and other forest products (Tr. 2583). I am told by the Southern Pacific men that this volume of traffic equals, and in some cases exceeds, the volume originating on or destined to points on branch lines of the Southern Pacific, which are similar in character to the Valley & Siletz Railroad in that they serve primarily a timber region and that their chief traffic resources are lumber and other forest products (Tr. 2584). In 1926 we had 7194 carloads of lumber and miscellaneous outbound traffic over the Southern Pacific to various territories and 2868 cars in the first half of 1927 (Tr. 2585). All of the traffic except a few cars moved under joint through rates with the Southern Pacific, which is evidence that the road is part of a through route. In 1926, 3726 carloads of logs moved to Winona which is a station on a branch line of the Southern Pacific, where they are dumped into the river and taken to a saw mill at Salem (Tr. 2586). In the last year and a half the road has served 24 or 25 shippers, furnishing outbound carload traffic. Our inbound traffic in 1926 was 34 cars. In 1926 we had 377 inbound cars of fuel oil, merchandise and miscellaneous commodities, and in the first half of 1927, 124 inbound cars. The fuel oil is for company use (Tr. 2588). The stock of [fol. 459] the railroad is owned by the William W. Mitchell Company which also owns the timber at the western end of the railroad. Cobbs & Mitchell Company own a sawmill at Valsetz and have an exclusive cutting contract with the

Mitchell Company. The majority owners of the Cobb & Mitchell Company stock are minority owners of the stock of the William W. Mitchell Company. In 1926, 32% of the railroad's carload traffic was produced by the Cobb & Mitchell Company. During Government control no car hire charges were made against the railroad (Tr. 2589). Since March 1, 1920, all car hire settlements have been made under contract with the Southern Pacific Company, pursuant to an order entered by the Commission in its Docket 13118 which was retroactive to March 1, 1920. It allows us 3 days' free time with regular demurrage charges thereafter under the average agreement. This is satisfactory to us, and I am sure it is to the trunk line. Our average detention per car is 2.82 days. Under the per diem rules our car hire charges for the four years ended December 31, 1926 would have been increased $71,165.74, or almost $18000 a year (Tr. 2590). From January 1, 1918, to December 31, 1926, the railroad has had a net surplus from operation of $13,875.42. No dividends have been paid or earned. Such an increased expense of operation cannot be absorbed in the revenue of the railroad and would have to be passed on to the shippers, which would probably not be permitted by the Commission (Tr. 2591). On all outbound carloads for 1926 our revenue was $199,812 and foreign line revenue was $1,061,695.39. In the first half of 1927, our revenue on outbound carloads was $73,834.89 and foreign line revenue was $419,220.70. The inbound traffic only amounted to 2%. When the timber on the road is cut, the road will be abandoned (Tr. 2592). Prior to February, 1922 our local rates were added to the rate from the interchange point. From February, 1922 to November, 1923, lumber rates from points [fol. 460] on our line were made up by adding 1¢ per hundred weight to the group rates, but in 1923 the group rates were established without any addition under an order of the Commission. Our divisions of these rates were fixed on the tap line scale by the Southern Pacific. When the differential was cut off we lost that much in revenue, as we received no more from the Southern Pacific in divisions and lost the benefit of the 1¢ differential (Tr. 2593). Straight per diem would increase our operating cost so as to make our present divisions insufficient to provide reasonable operating profit.

Cross-examination:

In drawing the comparison I did between our road and the branch lines of the Southern Pacific, I had in mind the effect on the shippers. I am not prepared to say (Tr. 2594) that we wish our line substantially operated as a branch of the Southern Pacific. I said that it was of the same character and that its products were similar and that our line is the same as a branch line of the Southern Pacific so far as arrangements affecting shippers are concerned. I don't want to go so far as to assume that my road is agreeable to being put in the position of a branch line, as I am ignorant of their method of accounting. In 1925 our line had net railway operating income of almost $35,000 (Tr. 2595). I don't feel competent to say that we want to be treated as a branch line of the Southern Pacific to the extent of having it take over that income. A carrier operating a branch line receives and retains any profits accruing from that operation, and if we make a profit we keep it (Tr. 2596). I can't answer whether or not we are willing to have our line treated in all respects as a branch line. The 32% of our carload traffic handled in 1926 from the Cobbs & Mitchell Company is an increase in volume. The traffic of that Company is increasing along with other traffic. It would be difficult for me to say how an increased car hire expense which we could not now pay could be passed on to shippers [fol. 461] The Commission has already said that our rates should be no higher than rates from branch lines of the major carriers. (Tr. 2597). Such increased operating expense would, I believe, be passed on to the shippers in log shipments and shipments of lumber to southwestern points, but possibly not on transcontinental shipments. This is because we get a division of the through rate on transcontinental lumber and on other traffic our revenue comes from our local rates. Where we participate in through rates the only way such a charge could be passed to the shipper would be by increasing the rate (Tr. 2598). We could not pass it on by increasing his demurrage charge or curbing his time allowance, as we subscribe to the Jones Demurrage Tariff. We could change that tariff if it was permitted but we could not do it by adding the car hire to any charge now made. On transcontinental lumber we get the tap line divisions, which are specific amounts and differ (Tr. 2599). It is from

4 to 6¢ per hundred pounds on traffic from points of origin from 15 to 45 miles. We assess and collect our own demurrage from shippers. We have no demurrage tariff of our own but subscribe to the Jones Tariff. We have some local traffic which averages 2 or 3 carloads of wood per day, which is considerable (Tr. 2600). The answer to question 16 in the answer to the questionnaire includes demurrage on local and interline traffic. I have no segregation of the total amount. Our own cars do not go off our railroad and all of our interline traffic is handled in foreign equipment. In 1925 we paid $379 in car hire (Tr. 2601). In the same year under the per diem rules of the Association we would have paid $5,789 per diem on outbound traffic for the four months shown in the questionnaire. The inbound shipments should be added to that (Tr. 2602). Those figures cover only carload shipments and not shipments of l. c. l. freight which are also interchanged and are subject to per diem. The total days detention shown in the answer to question 11 to the questionnaire are those on both inbound [fol. 462] and outbound shipments and total 5789 days on carloads. I don't know if that figure includes Sundays and holidays, but I presume it was figured on the per diem rules (Tr. 2603). On the basis of the figures in the answer to the questionnaire, we would have paid $5924 in per diem in four months of 1925 under per diem rules, and as a matter of fact we only paid $379 in the entire year. The $5924 is a minimum to which should be added per diem on merchandise cars. Our road performs no terminal switching at all (Tr. 2604) and all our local traffic is handled in our own cars. We never use a foreign car for that traffic. We filed an answer to a questionnaire circulated by the Short Line Association and showed on page 4 that we detained foreign cars a total of 16,829 per diem days in 1925. I would say that was correct. If it wasn't figured under the per diem rules, Sundays and holidays had been eliminated, but I figure they are included. I am quite sure of that. In that same answer we showed that the total number of per diem days accrued on 6,862 cars handled by us, and I would say that also was correct (Tr. 2605). Under demurrage rules we would exclude Sundays and holidays, but this answer asked for the total number of days, and there is no doubt in our mind that we included all days. The figure of 16,000

plus would, therefore, include Sundays and holidays. In the same answer we reported demurrage accruals of $1,652.76 in 1925 (Tr. 2606) and I would say that figure was correct. I could determine how much of that accrued on cars handled in interline traffic. The same answer shows that in 1925 our percent of net railway operating income to book investment was 2.9%, that in 1924 it was 2.1%, and in 1923 it was 2.2%. I would say that was correct. Our road has not yet been valued by the Commission (Tr. 2607). I would say that our investment figures of $1,112,175 in 1923, $1,169,856 in 1924, and $1,172,816 in 1925 were correct at the close of the calendar year. In the same years our net railway operating income was $24,534, $24,833 and $34,339 [fol. 463] (Tr. 2608). The amounts received for car hire, shown in the same answer to the questionnaire accrued on cars rented to the Cobbs & Mitchell Company. We also collect demurrage from shippers of wood, but I cannot say that demurrage is included as a car hire payment. None of the car hire shown as received was paid to us by foreign lines. All the stock of our company is owned by the William Mitchell Company (Tr. 2609). That company is affiliated with the Cobbs & Mitchell Company, which in 1926 shipped 32% of our outbound traffic. The principal stockholders of the Cobbs & Mitchell Company are minority stockholders of the William Mitchell Company. The only town of any size served by our road is Valsetz, which is a company town owned by the William Mitchell Company and the Cobbs & Mitchell Company. The loss there would be a Cobbs & Mitchell loss if the road was discontinued. The other towns are small, consisting of perhaps 12 or 15 houses, There are no towns of any moment at all, except Valsetz (Tr. 2610). Practically all the people along the line are employed either by the lumber companies or the railroad, and the only thing that justifies the operation of the railroad is the commercial activity of the owning industry, by which I mean the timber interests. The timber owned by other parties is moved out at the same time ours is, and when our timber is gone the other timber will be gone (Tr. 2611).

GUY L. ANDERSON was called as a witness and, being duly sworn, testified as follows:

I am Traffic Manager of the Longview, Portland & Northern Railway Company. It is not a member of the American Railway Association or the American Short Line Railroad Association and does not subscribe to the American Railway Association per diem agreement. It is vitally concerned with the disposition of this case, however (Tr. 2612). I have prepared a map showing the location of the line.

[fol. 464] (Said document received in evidence as Exhibit No. 225.)

As shown on the map the line extends from Longview Junction, where it connects with the Great Northern, Northern Pacific and Union Pacific, to Longview, Washington, a distance of three and one-half miles, and thence to Ryderwood, Washington, a total distance of thirty miles. It also connects with the same lines at Olequa and Vader Junction. Our principal station is Longview, a town of 12,000 people (Tr. 2613). Most of our interline business is handled at this point where the major industries are the Long-Bell Lumber Company, the Longview Fibre Company and the Port Docks of the Port of Kelso. The town of Longview is growing as there are important projects for building additional lumber mills and grain elevators. The line, therefore, is providing rail service for a metropolitan devolopment. The plant of the Longview Fibre Company is under construction and will be in operation next month (Tr. 2614). It has no connection with the Long-Bell Lumber Company. I have a statement containing information with respect to the organization and construction of the railroad, its value, etc.

(Said document received in evidence as Exhibit No. 226.)

This exhibit is to primarily show the financial structure of the railroad. It was built in 1923 and 1924 (Tr. 2615) with the approval of the Interstate Commerce Commission in its Docket 2828. Its total mileage is 52.8 miles, of which 12.96 miles are yard tracks and sidings, mostly in the City of Longview. I have prepared a statement of the earnings of the road.

(Said document received in evidence as Exhibit No. 227.)

This last exhibit covers the first eight months of 1927. Our freight revnue has been indicated showing local traffic which is principally logs, lumber and other traffic (Tr. 2616). Most of our revenue is derived from local log traffic which is favorable to revenue since it moves in great volume on an operating ratio of approximately 39%. We also have [fol. 465] some other local traffic of a general nature. 76% of our gross freight revenue comes from local traffic and 24% from interline traffic. Most interline traffic is between Longview and Longview Junction, a distance of 3½ miles, and its nature and handling is such that our operating ration on it is estimated to be about 81%. Our car hire concerns only our interline traffic (Tr. 2617). When our line started operating on April 1, 1925, we made car hire arrangements with our three connections which are still in effect and have proved satisfactory to us and the trunk lines. We pay on the per diem basis of $1 a day per car with a maximum of 4 days' free time on cars loaded in one direction and a maximum of six day's free time on cars loaded in both directions. Under the arrangement only actual time is allowed up to the maximum, and if a car is detained less than 3 days or less than 4 days, our free time is only for the actual number of days with no credit or average agreement. Recently we were allowed additional free time on export business to compensate for the additional time allowed shippers under the demurrage tariff (Tr. 2618). The freight tariff to which I referred is offered as an exhibit.

(Said tariff received in evidence as Exhibit No. 228.)

Under this tariff shippers are allowed 5 days' free time on traffic to Central America, Mexico and South America and 10 days' free time on traffic to other foreign countries. I have prepared a statement of cars received from and returned to connecting lines at Longview Junction in August, 1927.

(Said document received in evidence as Exhibit No. 229.) (Tr. 2619.)

It shows the volume of our interchange and the character of cars used. The exhibit, however, does not include overlapping cars, but is fairly representative of our monthly

interchange. In the month shown, we interchanged 568 cars, of which 355 were ownd by our connections, one-third of the total number of cars were received loaded and returned loaded. The preponderance of traffic was outbound [fol. 466] to the extent of 524 cars. I have also prepared a statement showing the effect of possible changes in our per diem arrangement.

(Said document received in evidence as Exhibit No. 230.) (Tr. 2620.)

This statement shows that during the first 8 months of 1927 our gross freight revenue from interline traffic was $128,826. In this traffic we used 5,831 foreign cars a total of 23,833 days. Our average revenue per car was $20.62 and we paid $2,635 per diem. The average detention per car was 4.07 days and our average payment per car per day was 11¢. In the same period we handled 613 mileage cars with an average detention per car of 5.43 days (Tr. 2621). Our average cost on these cars was 4.6¢. We hold that when dealing with the owner of a car, the mileage basis of car hire settlement is fairest and in the best proportion. The exhibit also shows that under straight per diem, during the same 8 months, our additional car hire expense would have been $21,187 or 20% of the revenue on the traffic handled. The exhibit shows that our gross revenue per car on interline traffic was $20.62, and on an operating ratio of 88% it would cost us an average of $18.15 per car to handle the business (Tr. 2622). The difference, or $2.47, must pay car hire, taxes and other essential items. On an average detention of 4.07 days, as shown by Exhibit 230, our per diem alone would cost us $4.07, which is considerably more than the net earned on that average car. The increased car hire under straight per diem would almost completely eliminate our net income from all sources. We own 320 cars (Tr. 2623) which are used only in our local traffic and take care of it. Two of our industries own their own equipment for intraplant switching. Except for emergency or error, foreign equipment is only used by us in interline traffic. That traffic moves largely on through rates and billing, and we haul practically all of it 3½ miles to Longview Junction where we interchange with the three trunk lines. We return equipment to the line from which

we receive it. In our 3½ mile haul, we have a four span [fol. 467] steel draw bridge across the Cowlitz River and a network of tracks serving Longview and its industrial district. On that haul we have an investment sufficient to build 8 or 10 times the mileage of an ordinary railroad. Because of these conditions our operating costs are heavy (Tr. 2624). We are in the position of a terminal company and our principal function is originating and assembling volume traffic for the benefit of our trunk line connections without expense to them. To get the traffic from the industries at Longview, it is right for the trunk lines with their long hauls to bear the car cost of originating traffic, since they would do that in their own terminals and on their own branch lines. We do not say that we should not bear our fair part of the car hire, but we think the situation is now adjusted as correctly as it is possible and any rearrangement will work a hardship upon us. We are not an intermediate carrier and most of the detention on our rails is by the shippers. (Tr. 2625). I have no figures to indicate the detention by shippers and the detention by our railroad, but on the total detention figures and with the shipper having free time and average agreements, I think the shipper holds the car more than we do. His time does not commence until 7 A. M. after placement, whereas, we have already had the car one day under our per diem arrangement. He then has two days' free time and under the average agreement still more free time. This is the same free time that the trunk lines grant to all shippers, and they should not expect per diem while the car is in the shipper's hands because that shipper is served by our railroad. Our dealings with respect to foreign equipment is with our direct connections as it should be (Tr. 2626). It is a settlement between car users and not car owners, as we do not settle direct with the several hundred car owners. We recognize the right of a car owner to get a [fol. 468] return on his investment and are willing to pay our share, but while we have foreign equipment it is working primarily for our connections and the matter of car hire settlement is between them and us, with them responsible to the owner of the equipment. The expense of making settlement direct with owners would be an unneces-

sary burden without any advantages. We would spend money for additional clerk hire, postage, etc. and the records would be a duplication on the part of each owner. An additional account for our road would be of no use, as it is now included in the records of our direct connections at no expense to them. A change in our per diem basis would not speed up equipment movement. We would make additional switches where the cost would represent a saving as against per diem, but that is all. We are now alive to the need for efficient car service (Tr. 2627). We have a car service agent who oversees this matter. We only have a 3½ mile line haul on interline traffic and our revenue is fixed accordingly, but our time of movement of equipment is not reduced as compared with the 50 or 100 mile short line which would get more revenue. Under straight per diem our car hire cost would be 20% of our gross interline revenue and would more than wipe out the net revenue on that traffic and would be a disproportionate burden on us as compared with our interline revenue.

Cross-examination:

The stock of the railroad is owned by the Long-Bell Lumber Company (Tr. 2628). I think the Weyerhaeuser Company is the largest timber company and the Long-Bell Company the largest lumber manufacturers. The Long-Bell Company owns the stock of the railroad. I wish to correct a previous statement. In the first 8 months of 1927 our gross freight revenue from interline traffic was $120,826. We have two distinct car hire arrangements, one on per diem cars and the other the mileage basis. Our computations respecting per diem relate only to per diem cars and [fol. 469] do not include the mileage cars (Tr. 2629). Of the 5861 cars of interline traffic shown in Exhibit 230, I do not know what part was traffic from the owning industry. On Exhibit 227 the revenue of $79,000 on lumber forwarded is practically all from the Long-Bell Lumber Company. Only a small portion of the balance of the interline traffic would be from that company (Tr. 2630). 95% or 97% of the lumber forwarded would be Long-Bell traffic. I had not segregated the demurrage in Exhibit 227 as between interline traffic and local traffic, as our principal industries are

on the average agreement and receive credits from local and through cars. I think that most of our demurrage is collected on local cars, although I don't know the per cent (Tr. 2631). During the period covered by Exhibit 227 we paid approximately $2,635 in per diem. I do not know what causes the difference in the statement of this expense in Exhibit 230 as compared with Exhibit 227. None of this is accounted for by payments made for the use of our cars by foreign lines (Tr. 2632). Our road is a party to the official equipment register which is filed with the Commission as a tariff. The language in that register does not contemplate the collection of per diem on our own equipment, although the language does provide that per diem on our cars is to be reported by other roads to our car service agent. We do not, however, permit our cars to go to foreign lines. We have not done it up to now and I know it is not contemplated (Tr. 2633). If that should occur, I don't like to say whether or not we would extend to foreign lines the same car hire arrangement we now have. Exhibit 228, our demurrage tariff, applies on cars held at ports for delivery to water carriers, and we have some traffic which qualifies under that provision. The volume is comparatively small but the business at the port dock is growing rapidly. The additional free time is allowed on all traffic by rail going to water carriers for export move-
[fol. 470] ment (Tr. 2634). It would apply on a car given to us by the Union Pacific at Longview Junction and hauled to the dock at Longview. On most of that traffic we would get a division of the rate and also the free time extended to the shipper under the tariff. The difference between the free time under the tariff and the ordinary free time of 2 days is added to our free time under our per diem arrangement (Tr. 2635). On Exhibit 229 it is shown that our outbound movement is much the heaviest. It shows 44 cars that came in loaded and went out empty because they were flat cars for which we had no use. Exhibit 230 shows an average revenue of $20.62 per car received on interline traffic for an average haul of 3½ miles. Our statement of the operating ratio on that traffic was an estimate (Tr. 2636). That estimate was 39 on local traffic. On all

traffic our operating ration is 50%. I don't claim that our operating ratios of 39% on local traffic and 88% on interline traffic are exact, but I think it is fairly representative. It is the best judgment of our auditor (Tr. 2637). I don't know the exact process he went through but that was his best estimate. Our log traffic is our heaviest tonnage. We haul it in trainload lots with a single crew, in trains of 55 and 60 cars. The cars used are 72 feet long, so that we have the traffic in large units, with a direct haul, and the empties back, making possible a very low ratio of operating expense. On interline traffic we had 180 cars with loads in and loads out; whereas, on local operation we have almost the same empty haul as loaded haul. The same crew that takes the logs down, however, brings the empties back (Tr. 2638). On interline traffic the crew that goes over comes right back, but our logs come to us at the rate of two trainloads a day every day, filling the capacity of our locomotives while on interchange traffic we have varying quantities. The detention of interchange cars of 23,833 days, [fol. 471] shown in Exhibit 230, includes Sundays and holidays and is computed under the rules of the American Railway Association (Tr. 2639). I do not think the trunk lines pay us enough for our gathering service when they pay us $20 a car for our 2½ mile haul, as that is exceptionally expensive. We get our compensation for our part of the through transportation in the division of the rate, but we don't get all of our compensation out of the trunk lines. In a large part that is the way we should get our pay (Tr. 2640). A connecting line ordinarily receives a division or its local rate as pay for its part of the transportation performed, which resolves the thing into a rate proportion. In saying that we were entitled to free time because shippers receive it, I did not mean to suggest that our railroad was a shipper. Every interline car that comes to us is in the hands of the shipper or consignee while on our line and that results from the handling of the traffic (Tr. 2641). The free time is allowed because of the operation of the demurrage rules, but we do not contend that we should occupy the position of a shipper for the purpose of getting the free time he gets. We are satisfied with our present arrangement because we get free time while the

shippers have the cars, but we are not in the same position, so far as pay for quipment is concerned, as a shipper. I do not see that because we get the same free time that a shipper gets that we are in the same position as a shipper (Tr. 2642). Some shippers get 4, 5 or 6 days free on average agreements and some get more on export business. We get 4 days free. Under straight demurrage our shipper gets 2 days' free time without having to pay for the car, and on the same shipment, under our arrangement, our railroad gets 2 days' free time. There is a difference between the two situations because we spot the car for the shipper sometime during the day (Tr. 2643). I think that our situations are very different. After the free time, we pay $1 [fol. 472] a day for the car and the shipper pays $2 a day, so that we are $1 better off than the shipper, but there are many other features involved. The $20 we get I think is meant to pay for our service as a railroad, but does not in my opinion adequately pay for it (Tr. 2644). We consider that we have an obligation to furnish cars, but on interline traffic the cars of the main lines are put in to gather up business. We get earnings on the basis of a 3½ mile haul, whereas, they get perhaps $300 or $400 a car. I do not contend that the trunk lines ought to pay our railroad on the Long-Bell Lumber Company through us for producing the traffic. The Commission has recognized that the line originating the traffic is entitled to some consideration in divisions, but that consideration goes to the question of divisions and always has (Tr. 2645). Our divisions are fixed without reference to car hire. They are fixed with the Traffic Department and the car hire arrangements are made with the Car Service Department. I do not think we are getting double compensation out of divisions and through free time (Tr. 2646). I would say that the average earnings of all freight cars per car are supposed to cover not only the equipment but all other features. The average is reduced because the cars stand around idle part of the time, but the cost is there when they are standing idle, but the earnings are not there. I have no knowledge as to what the average earnings of all cars per car are, or whether they are greater or less than those shown in our Exhibit 230 (Tr. 2647). Even if the average earnings

per day on all freight cars in the country were less than our average earnings, I would not be able to see much relation between the two, as I don't think a country wide average can be applied to our line. Our cars are in service and moving, while companies owning other cars store them (Tr. 2648). Divisions are being established right along. Probably our most important divisions were established prior to our present car hire arrangements. Our line connects with the Union Pacific, Great Northern and Northern [fol. 473] Pacific (Tr. 2649) which operate on a joint track at one interchange. We have the same car hire basis with each railroad and receive 4 days on each load and 6 days on a car loaded both ways, after which we pay $1 a day. This arrangement was put in about the time we started operating, which was April 1, 1925.

C. W. WOODRUFF was called as a witness and, being duly sworn, testified as follows (Tr. 2650):

I am Manager of the City of Prineville Railroad, a municipal corporation, and have a map showing the location of the railroad.

(Said document received in evidence as Exhibit No. 231.)

The road is 18.3 miles long and connects with the Oregon Trunk and Union Pacific Lines at Prineville Junction and then extends east to the City of Prineville. It was constructed by the city which is bonded for the construction cost (Tr. 2651). East of Prineville is a large body of timber. A large private holder got the City to build the line into Prineville with the understanding he would put a mill at Prineville and extend the line into the timber. The City voted the bonds and built the railroad, but the man's promise was never fulfilled and he is now gone. We built the road to get a better connection for the City but I don't think it would be built unless we had believed that we were going to get a considerable tonnage of forest products. The road makes no money. I have a statement of the income account of the road for the year 1926.

(Said document received in evidence as Exhibit No. 232.) (Tr. 2652.)

I think the reports for the past years up to 12 or 13 years ago were probably not correct because some bills were unpaid. In addition to this statement, the City pays about $22,000 annual interest on the bonds that is not paid by the Railway Company and is not shown in the statement. In 1926 we had 587 carloads outbound and 111 inbound. On less-than-carload traffic we had 124 cars inbound and 35 [fol. 474] cars outbound. This traffic consisted of cattle, sheep, gasoline, oil, coal, automobiles (Tr. 2653) and miscellaneous commodities. We are on a demurrage basis of car hire. I have a statement of our present demurrage arrangement.

(Said document received in evidence as Exhibit No. 233.)

It is an average agreement with credits allowed. We do not separate inbound from outbound cars in determining the average and apply the same basis of demurrage to our shippers and consignees (Tr. 2654). We are a party to the National Demurrage Rules. I have prepared a car hire and demurrage statement for 1926.

(Said document received in evidence as Exhibit No 234.)

If we paid straight per diem without free time, it would cost us about $2,600 a year, whereas it now costs us about $12 a year. We have a very friendly relationship with our connecting lines (Tr. 2655). We do everything we can for each other. They help us make out our reports to the Commission, arrange for the publication of our tariffs and in other respects try to help the railroad along. Our present car hire basis is satisfactory to us and I think it is to our connections. We do not want to see any change (Tr. 2656). I have a copy of our freight tariff No. 1-B.

(Said document received in evidence as Exhibit No. 235.)

We have our own rates and any rate to Prineville is the rate to Prineville Junction plus our rate. There are some exceptions such as the through rates on cattle and sheep to Portland and Seattle. We also have an arrangement with both connections under which there is no charge made on stock cars, since it is difficult to tell what the requirements are for that traffic. The stock comes from long dis-

tances to be shipped (Tr. 2657), and it may not be possible to find out until the night before that the car is wanted, or, having ordered a car, they may decide to hold the cattle, which leaves us with the car. We are permitted to store stock cars at Prineville, but only have 4 or 5 there for each line.

Cross-examination:

We own no freight cars but operate our freight service [fol. 475] with steam. We have a regular passenger service twice daily but our freight service is irregular. We rent our locomotive but the rent for it has never been paid (Tr. 2658). In computing time under our average agreement for car hire we do not distinguish between our inbound and outbound traffic or segregate the two. If we have a debit on an inbound car we can offset that by a credit on the outbound car. I do not think a shipper can do that as the freight bill on the inbound traffic would be settled before he could ship out (Tr. 2659). Under our car hire arrangement we escape with very little car hire because we handle the cars quickly and also because of the transfer of less-than-carload freight at Prineville Junction. We have 18.3 miles of track and about 1.7 miles of yard track and sidings (Tr. 2660) or about 20 miles in all.

J. G. HEIMRICH was called as a witness and, being duly sworn, testified as follows:

I am in charge of the management of the Great Southern Railroad Company (Tr. 2661), as President and General Manager. The road is 41 miles long and was originally built to tap a wheat country and a lumber belt. We are operating under a demurrage basis of car hire, having the average agreement. It has been in effect since 1918. From 1905, when the road was built, until 1918, we operated under straight per diem which was changed to the demurrage basis (Tr. 2662). The change resulted from a hearing had by the Railroad Commission of Oregon which prescribed a demurrage basis of car hire for our road. Since then that basis has been applied on intrastate and inter-

state traffic. The road has made no money since 1922. We paid our interest to them until then, but since then have paid no interest on investment. In 1924 we had to borrow $12,000 to pay operating expenses. Since then we have been going into the red every year because of truck com-
[fol. 476] petition. We now have 2 days' free time but would like to have additional free time. If a car is placed to us in the morning at 7:00 A. M., we are not able to place that car and start its time (Tr. 2663) until the next morning at 7:00 A. M. If the shipper keeps the car for 2 days, we are compelled to pay a day's demurrage which he does not pay. We get 2 days' free time. The amount of our entire revenue varies from about $52,000 a year up to $108,000 a year. Our passenger traffic does not amount to much at this time. I do not know what part of our freight traffic is interline. We haul considerable wheat into The Dalles for mills and warehouses (Tr. 2664) and considerable goes in foreign cars to Portland. We use our own equipment for local traffic. We have 2 locomotives, 12 box cars, 9 flat cars, 5 outfit cars, 2 stock cars and 2 passenger coaches. I don't know what our book investment was in 1926. The Commission has valued our road, but I do not recall what the figure was. It was about what our book value was. We prefer to operate under the demurrage rules in preference to the per diem basis (Tr. 2665). We operated under straight per diem for a long time but found it very inconvenient. We were compelled to settle with all the car owners owning the cars we handled during the month and it made us a great deal of work. We do switching under a switching tariff at The Dalles.

Cross-examination:

Our road connects with the O. W. R. & N. (Tr. 2666) which is our only trunk line connection. I don't know that our demurrage basis was put in by the Director General. We had a hearing here in Portland, and, so far as I know, the putting in of the basis was due to the order of the Oregon Commission. We get no division of through rates on our traffic. Our switching rate of $4.50 on lumber is absorbed, and on wheat we get our local charges (Tr. 2667).

Examiner Rice: The next hearing is at San Francisco, California, September 30, 1927. The hearing is adjourned until that time.

[fol. 477] Proceedings at San Francisco, California, September 30, 1927.

Examiner Rice: The Interstate Commerce Commission has set for further hearing at this time and place Docket 17801, Rules Governing Car Hire Settlement between Railroads, and the various cases that have been consolidated therewith.

R. K. MINSON was called as a witness and, being duly sworn, testified as follows:

I am Traffic Manager of the Magma Arizona Railroad (Tr. 2678). It is an independently owned and operated railroad, 28 miles in length, extending from Superior, Arizona, to Magma, Arizona, where it connects with the Southern Pacific Company and interchanges all its traffic. It is an associate member of the American Railway Association and a subscriber to the per diem rules agreement, but has no vote. It owns 2 locomotives, 4 box cars, 9 dump cars and 2 flat cars and serves the Copper Mining industry and the general public on its line. It is not financially able to own enough freight cars to handle the traffic it originates or equalize its per diem charges, and it must depend upon its trunk line connection to furnish it with necessary cars. Its tonnage is substantial but the revenue therefrom is not sufficient to meet its operating expenses including car hire (Tr. 2679). I have prepared a statement of its operating revenues and expenses for the years 1924, 1925 and 1926. It shows an average loss from operation of $22,424.33.

(Said document received in evidence as Exhibit No. 236).

Prior to March, 1923, we operated as a narrow gauge road and also were on a straight demurrage basis of car hire. There was no interchange and 2 days' free time was allowed for the transfer of freight. After the completion of the standard gauge road, March, 1923, we felt the demur-
[fol. 478] rage basis would be ruinous, since our average detention was about 4 days a car. The Southern Pacific

wished us to continue that basis, but to escape it we became subscribers to the rules. We think we should have some settlement other than the per diem basis (Tr. 2680) which we now have, since the car hire results in our earning relatively small revenue. Our car hire seems excessive compared with income, and we think we are entitled to some free time. We are now losing money and have always lost money. We operate 3 freight trains each way a week between Superior and Magma, on Tuesdays, Thursdays and Saturdays. Cars from connections remain on the line at least 3 days before they can be delivered back, which means at least $3 per diem on each car. It is almost impossible, however, to deliver cars back in 3 days because 2 days free is allowed under the demurrage tariff to shippers, on which we pay per diem without reclaim. Our average detention in 1926 was 4.67 days per car, which means that we paid $4.67 for each car used (Tr. 2681). Our revenue was reduced in that amount on every car handled, and is a burden compared with the expense incurred by the connecting line. In 1926 we paid $4,724 per diem on 1056 foreign cars. 1003 of them were handled under straight per diem and on them we paid $4,680 to car owners. On 53 privately owned cars we paid mileage of $44.35. It is 56 miles from Magma to Superior. On the mileage rate of 1½¢ per mile, private car owners would receive 84¢ for a round-trip per car. On the same trip, railroad-owned cars earned $4.67 per car, although the detention is the same. This seems unfair. The per diem is unreasonably high, or the mileage rate is unreasonably low (Tr. 2682). If all freight cars were placed on a mileage basis of 2¢ a mile, it would solve the car hire question for us. We should have as much free time as the shipper. I have prepared a statement showing how different car hire bases work out on the railroad.

[fol. 479] (Said document received in evidence as Exhibit No. 237.)

One objection we have to settling car hire under A. R. A. rules is that they require each line to report per diem and make settlement direct with car owners, which imposes an extra cost on our railroad which has only one connection. Our settling with several hundred car owners direct is disproportionate to our small volume of traffic. We think our settlements should be made between our line and the South-

ern Pacific, which would relieve us of this extra cost (Tr. 2683). It would impose very slight expense on the Southern Pacific, since it has to make settlements to car owners on the same cars and could include our settlement without trouble and at no additional expense. Generally speaking, the detention on our line is about 5 days a car. The movement of the car from Magma Junction to El Paso, I would say would take 3 to 5 days. To Los Angeles it would take about the same time, as the distance from the two points to Superior is about the same (Tr. 2684). Between our junction and El Paso or Los Angeles the service of the Southern Pacific is in the nature of a bridge service.

Cross-examination:

Prior to the first of the year we interchanged two of our cars in copper bullion traffic but have not interchanged any since then. We collected per diem for our cars when they were off our rails. When the demurrage was in effect, we had 2 days' free time the same as the shipper had. (Tr. 2685). We then gave that up and subscribed to the per diem rules because that was the best method for our road. The per diem basis is now preferable to the straight demurrage basis. I think we should have as much free time as the shipper. We do not now get it as we are not working under demurrage, although under demurrage we would have to pay more money since we would have to allow the shipper 2 days free and (Tr. 2686), that free time would [fol. 480] offset our free time. We want 2 days free on each car and could get it under the demurrage basis, but we gave it up and do not want it back. We want the per diem basis with 2 days free time. One reason we delay cars 3 days is because we operate 3 times a week. If we operated a train every day we would make nothing and would have to go out of business (Tr. 2687). So far as per diem is concerned, if we moved cars as soon as they were unloaded we would not have to pay so much. You might say that our excessive per diem accruals is due primarily to the fact that we don't operate enough trains. The Southern Pacific operates more trains and has more traffic. We take cars from the Southern Pacific to Magma and place them for unloading and allow a consignee 2 days. If it wasn't for that we could get the cars back in 2 days (Tr. 2688). The shorter

time on the Southern Pacific for the longer haul, as compared to our detention is due primarily to the fact that the Southern Pacific operates more trains. We should have as much free time as shippers because there are other small lines analogous to our road which have a line haul and are allowed 2 days free. The rules of the American Railway Association permit reclaim on switching but not on line haul traffic. Our complaint is as to free time on line haul traffic (Tr. 2689). If the other roads to which I have referred were put on straight per diem we would have to accept it if the Commission said so. If the Southern Pacific made our settlements with all other carriers it would be a great assistance. I don't know what percentage of the cars used by us are Southern Pacific cars, but I think the majority are Southern Pacific cars, so that most of our car hire settlements are with the connecting lines (Tr. 2690). We collect and retain our own demurrage. Our demurrage tariff allows the shipper or consignee 48 hours for loading or unloading and they take all they can get. It takes us 3 days to handle the car from Magma to Superior and return, which [fol. 481] allows the shipper 2 days, generally speaking (Tr. 2691). We can occasionally take the car from the junction to the end of the line, allow 2 days for loading or unloading and bring it back in 3 days, if the loading is done promptly. We subscribe to the National Demurrage Rules and receive a division of joint through rates on most traffic. On a very small volume of business we have no through rates, but the rest of it moves on a division of through rates (Tr. 2692). Our service is a line haul service in every case, although we perform terminal switching at Superior for shippers and consignees. The Southern Pacific is our only connection and all of our traffic is interline. I think the Magma Copper Company owns the stock of the railroad but I am not sure. It is one of the principal industries served by the railroad (Tr. 2693). It furnishes 65 or 70% of our traffic. The 1056 cars that we handled in 1926 accounts for the freight revenue of $92,242.51 shown in Exhibit 236. Our average haul on it was 28 miles. Most of that traffic was fuel oil and timber (Tr. 2694). You can get the average revenue a car by dividing the number of cars into the freight revenue. The item of 1056 cars represented loaded cars, as we have an empty haul one way on practi-

cally all cars except box cars. Practically, you could get the average revenue per car by dividing the number of cars into the freight revenue. The freight on a carload of bullion from Superior to New York is $12.50. It loads about 125,000 pounds, which would make the total revenue about $85 (Tr. 2695). The cars average from 54 to 55 tons a car and move from Galveston in connection with the Southern Pacific Steamship Lines. In speaking of the per diem on other lines, I was not complaining about what they had. I said we would have been satisfied if the Commission required them to pay per diem as we would be compelled to be (Tr. 2696). Our railroad connects with the Southern Pacific at Magma, Arizona, and is 28 miles long. In ad- [fol. 482] dition it has sidings and yard tracks of about 1½ or 2 miles. The copper bullion is loaded in box cars. An average loading of copper bullion from our railroad to Perth Amboy, New Jersey, would be 54 or 55 tons at a rate of $12.50 a ton. It is handled on through rates from Superior to refineries in New York Harbor (Tr. 2697). We receive a division of the rate. Our principal traffic of fuel oil and mining timbers is inbound. The 1056 loaded cars which we handled in 1926 were almost all inbound. It includes the copper bullion which was moved outbound (Tr. 2698) if the cars came in loaded. If there are sufficient inbound cars to handle the outbound bullion, we send them back loaded and the rest go empty, so that some of the cars are loaded inbound and outbound. In 1926, 1056 cars came on the line loaded, of which some went out loaded and some empty. All foreign cars move inbound under load, and if we haven't a load for them they return empty (Tr. 2699). Of the 1056 loaded cars inbound in 1926, I don't know what proportion were loaded outbound (Tr. 2700). On copper ore our earnings are based on a mileage prorate with a minimum of 25% and amount to about 11% of the through rate. The total earnings on a car to Perth Amboy would be about $687.50, of which we would get about $77 for a 28-mile haul. We get 11% of the rate. I do not know what our investment in road and equipment amounts to (Tr. 2701). We make reports to the Commission but the new road has not been valued by the Commission. It began operation in March, 1923. The road operates thru mountains and deserts. From Magma it runs across a flat desert for 8 or 10 miles and then comes to the mountains. We

have a 2% grade into Superior (Tr. 2702) for a distance of 2 or 3 miles. In our switching yard we have a 4% grade. We can handle about 14 cars to a point outside of Superior, then we have to bring them in 5 or 6 at a time, over a short distance of about 3 miles out. Magma and Superior are [fol. 483] our two agency stations. I don't know what our cost is for reporting per diem accruals to car owners, but we would save a clerk's hire if we could settle direct with the Southern Pacific (Tr. 2703). I have no idea what that would amount to. If an arrangement was made whereby we could settle with the Southern Pacific instead of with individual car owners, I think it would save a part of the clerk's pay, but I don't know how much. There is also involved the postage stamps and stationery, although we would not fire any of the clerks (Tr. 2704). I don't know whether we would keep the same number of employees, but we would have part of the clerk's time to do something else.

W. G. WILT was called as a witness and, being duly sworn, testified as follows:

I am Assistant to the General Manager of the Trona Railway Company and have been in railroad work for 22 years (Tr. 2705). The railroad was incorporated March 12, 1913 and has capital stock of $150,000. It operates a distance of 31 miles between Trona, Califorina and Searles, California, where we connect with the Southern Pacific, our only railroad connection. The line was built to serve the plant of the American Potash & Chemical Company, at Trona. There are now other industries in the vicinity, but since 1914, when the construction was completed, 90% of our business has been for the owning industry (Tr. 2706). In 1926, the California Commission found that the railway was a common carrier only to a limited extent. It is industrially owned and for the most part serves the owning industry. It is, however, incorporated and operates as a common carrier and an independent company. It files tariffs with the Interstate and California Commissions and participates in joint rates on outbound and inbound business. It holds itself out to perform all the duties of a common car- [fol. 484] rier. It operates two locomotives, one combination passenger car and several freight cars, which are not

used in off-line service. No foreign cars are used for purely local business, as we have none, practically speaking (Tr. 2707). The road is a party to the Pacific Car Demurrage Bureau tariff and observes all the demurrage rules. Prior to 1920 the railway secured its foreign cars under arrangement similar to the demurrage rules, but at the end of Federal control the Southern Pacific insisted upon its observance of the per diem rules, and until the end of 1926 we paid regular per diem on all cars except mileage cars. Effective January 1, 1927, arrangements were made to secure cars on the demurrage basis. We are allowed 2 days' free time from the first 7 A. M. for unloading and return of the car and 2 days' free time for loading and delivery of load. No additional free time is allowed to cover the period required for our service, and we do not receive the benefit of the average agreement. We handle one train each way daily, producing maximum efficiency (Tr. 2708). The owning industry makes every effort to avoid demurrage by releasing cars as soon as possible. That delay is minimized as shown by the fact that in the first 8 months of 1927, 2539 cars were handled, with an average detention of 1.7 days on the railroad. In the 7 years from 1920 to 1926, we handled 13,832 carloads, 7,830 outbound and 6,002 inbound. The per diem paid was $34,982 and demurrage collected was $7,639, leaving a net expense of $27,343. From 1914 to 1920 we showed a profit of $18,481.45, while from 1914 to 1927 we had a loss of $107,088.49. Until 1926, the officers of the railway were officers of the owning industry and received practically nothing for their service (Tr. 2709). From 1920 to 1926, the average revenue per loaded car mile was approximately $1.50 and our operating ratio was approximately 70%. In 1921 and part of 1922 the own-
[fol. 485] ing industry was closed down. If this was permanent the railroad would be scrapped. We now have a chance to clear up our deficit. In the first 7 months of 1927 the railway handled 2185 loads, 1212 outbound and 973 inbound. Our car hire expense was $1,328 and demurrage collected was $423, with a net cost of $905. On the per diem basis our cars would have cost $3,953, which shows a saving of $2,625 or about 60%. Had the present demurrage basis of car hire been in effect from 1920 to 1926, the saving would have been about $23,000 (Tr. 2710). Under our present arrangement, we have paid $905 in the past 7 months to

furnish cars to our industries, and this cost would have been higher had the average agreement been in effect with those industries. We have no specific complaint at this time, but we think it is vital that we be free to make any advantageous agreement possible with our connection to cover furnishing of cars. Our line is comparable to any switching carrier connecting an industry with transportation facilities. It originates freight which is highly profitable to the long-haul carriers and delivers large quantities of freight inbound but receives only a small part of the haul and performs all the switching and sustains the car delays both ways (Tr. 2711). We think the Southern Pacific should furnish cars for the movement of freight to and from a point a few miles off their own line, since that service is the same that they would furnish if it originated or delivered the freight itself. They are also relieved of switching enough to offset any additional car hire expense incurred on the short line. We think the present basis should be continued and feel that additional concessions should be approved. Our industries are entitled to the benefits of the average agreement under the demurrage tariff, and we should, therefore, be allowed an additional free day on cars loaded one way and two additional free [fol. 486] days to cover the time lost under the demurrage rules (Tr. 2712).

Cross-examination:

The American Potash & Chemical Corporation owns all the stock of the railroad, and since 1914 has furnished about 90% of the traffic. If the owning industry was not there, the railroad would never have been built. We have three other industries and some transient mining companies. All our traffic from the owning industry is handled our full distance of 31 miles (Tr. 2713). The Interstate Commerce Commission recognizes our status as a common carrier, and if we don't file reports we hear about it. I would not say the filing of reports was voluntary (Tr. 2714). We have filed them since the road started operation in 1914. One reason why our operating profit in the first six years was turned into an operating deficit was because the industry was entirely closed down in part of 1921 and part of 1922. If the railroad needs any money to pay its operating

deficit, that money comes from the American Potash & Chemical Company (Tr. 2715). During the time the owning plant was closed down, we took care of the mail and kept the express going, but that was all the operation that was carried on. All the freight from the owning industry stopped, but there was some inbound freight. I don't know how it was taken care of, as I was not there at the time (Tr. 2716). Any reduction in our car hire cost since 1927 and which may occur in the future will benefit the owning industry by relieving it of putting up that much additional money to operate the railroad. In asking for free time, I have not necessarily compared our railroad with any other. We don't do anything except to originate freight and turn it over to the Southern Pacific and deliver freight from the Southern Pacific. We are a connecting line between the Southern Pacific and the owning industry and other industries (Tr. 2717). It is only handling a long switch for the Southern Pacific. We are a go between between our indus- [fol. 487] tries and the Southern Pacific. Under the same circumstances, I think our theory of car hire should be extended to all other carriers in the country. I haven't gone into the question of whether the Southern Pacific or Santa Fe should get cars for nothing under the same circumstances. We get a division of through rates on about 80 or 85% of our business (Tr. 2718). The balance of it is handled on local rates which are in addition to the junction point rate of the Southern Pacific. We do some terminal switching at West End and at Trona, but our interline traffic with the Southern Pacific Company is all line haul (Tr. 2719). We have very little inbound company material, but everything that comes to us from the Southern Pacific is in foreign cars. The allowance of additional free time would permit us to use foreign cars in most cases without paying anything. I think we should be allowed to do that on cars loaded with company material if a switching railroad is allowed 5 days. There is no local traffic on the railroad except as I have stated (Tr. 2720). There is no intra-plant or inter-plant movement. I said that because the Southern Pacific delivers cars to us it avoids a switching cost which would be as great as the per diem accruals on our line. That was practically speaking. If a large industry was located on the Southern Pacific, it would require considerable switching, and if we do that it relieves the

Southern Pacific of that much expense (Tr. 2721). Our average detention was a little less than 2 days per car. If these industries were located on the Southern Pacific, it would allow them free time and would collect demurrage for cars held over the free time. All we ask is the same thing, plus another day, to enable us to handle the switching for them (Tr. 2722). Any short line railway that performs switching service for the transcontinental line which gets the big end of it should pay for the cars on the same [fol. 488] basis as industries. When we take the car and do the switching and give it back within the free time allowed the shipper, I think we should be allowed something for doing the switching. The short line is performing practically nothing but a switching service for the trunk line, and the railroad securing the big revenue ordinarily does and should stand the car cost (Tr. 2723). I don't think it should be looked at from a technical standpoint. If the Southern Pacific should originate a car, haul it 31 miles, and turn it over to the Santa Fe for transcontinental haul, it would not be in the position that we are in because they do it once in a thousand cars and we do it with every car that is not my only reason (Tr. 2724). The 31 miles I referred to constitute our main line. We have a little over 2 miles of sidings and spurs (Tr. 2725). Our gross revenue for the first 7 months of 1927 was $147,346.56. I haven't separated the gross freight revenue, but the other revenue is comparatively small. Most of our revenue is derived from freight operation. The operating expenses in the same period were $115,712.19, which does not include car hire. I can't say exactly what additional expenses were taken out to get at the net railway operating income (Tr. 2726). Our taxes for the 7 months should be about $6,000. Our book investment is approximately $700,000. We handle the potash in box cars and our revenue per carload on it is $40 to $45 (Tr. 2727). We do not want our revenue adjusted to the switching basis, if that is lower. I don't know whether it would be lower or not. If the switching rate was as high or higher we would have no objection to changing (Tr. 2728).

J. R. PITCHER was called as a witness and, being duly sworn, testified as follows:

I am Vice President and General Manager of the Silver- [fol. 489] ton Northern Railroad, which extends from Silverton, Colorado, 14 miles to Animas Forks, Colorado, with a branch from Howardsville to Green Mountain, 1.8 miles, and from Silverton to Gladstone 7.25 miles. We serve only the mining industry. Some of the towns aren't towns—they are terminal stations where the ore is brought from the mines to the stations where it is loaded in the cars (Tr. 2729). We have 12 to 15 of those stations. The railroad is not owned by an industry. My wife and I own the stock and we have no interest in the mines. Our railroad connects with the D. & R. G. at Silverton. It is a narrow gauge road and connects with the narrow gauge division of the D. & R. G. We have 3 locomotives, 2 passenger cars and about half a dozen freight cars (Tr. 2730). Our local traffic is negligible and usually handled in our own cars. If a D. & R. G. car was moved empty to a point, we would handle local traffic in that car, but we can handle it in our own cars. The Commission has tentatively valued the road at somewhere around $200,000. Our book investment in 1926 was about $435,000. I have an exhibit showing various statistics with respect to the railroad for the year 1926 (Tr. 2731).

(Said document received in evidence as Exhibit No. 238.)

The first sheet shows expenses and revenues for 1926 and the other sheet shows the inbound and outbound loads, number of cars interchanged, the amount paid for hire of equipment, and the estimated amount which would have been paid if straight per diem would have been charged without free time. We have an arrangement with the D. & R. G. under which we get 2 days' free time after which we pay per diem at the rate of $1 a day. The cars interchanged are narrow gauge cars (Tr. 2732). Their value is about 50% of the standard gauge car, and I think that one-half the one dollar rate, or 50¢ would be compensatory to the car owner. Our railway operating income in 1926 was $43,071.28. That is not a representative year. Up to [fol. 490] August 31st of this year, we have failed to make

expenses by about $4,000 (Tr. 2733). The preceding years we had fluctuations. They were necessarily wide because mining is the only industry served and it has its ups and downs. In 1920 and 1921 there was no mining carried on for 18 months, but 1926 represented the other extreme. The road has made no real money over a period of 10 years. It paid a dividend of 10% in 1905 but has paid none since (Tr. 2734). We allow 2 days' free time to shippers under our demurrage arrangements, which are the American Railway Association rules. Until 1917 or 1918, we got 5 days' free time on foreign cars and paid the per diem rate thereafter. During Federal control, we were put on a straight demurrage basis, which lasted for several months, but the A. R. A. held that since we were a narrow gauge line we could make any arrangements we wanted, so we arranged for 2 days' free time and $1 a day per diem thereafter. I understand that would still be the case under Paragraph B of Rule 6 of the present rules because we are a narrow gauge road (Tr. 2735). That is only my opinion. It would be very disastrous to us if that was taken away from us. We are not satisfied with our present basis, as we think we ought to get the cars without any charge. We deliver the loaded cars to the D. & R. G. in such shape that they can take them right on without inspection which saves them the cost of a car inspector at Silverton whose wages I think would be $120 a month or more. That is more than the per diem amounts to, as last year we paid only $513 per diem. We have both local rates and joint rates (Tr. 2736). About 40% of the traffic moves on joint through rates. Our average revenue per car depends on how long a haul we get. Our present car hire arrangement became effective, I think, in 1918. Most of our loaded haul is down grade. Supplies move up to the mines, but the ore output far exceeds the tonnage of the supplies (Tr. 2737). The ore we haul is known as concentrates. The length of haul [fol. 491] the D. & R. G. gets depends on the point of destination. 40% of it goes to Durango, a haul of 45 miles, and the balance goes to Henrietta, 350 miles, or Leadville, about 300 miles. These conditions might change in 6 months. Our freight cars cost about $100 and were bought second-hand from a bankrupt road. The cars we get from the D. & R. G., I would judge at present prices are around $2000

or $2200. That is only my idea (Tr. 2738). We collect demurrage on the narrow gauge cars from consignees when it accrues. We collect whatever the tariff provides. On standard cars the demurrage is $2 a day after the first 48 hours and $5 a day thereafter, and those are our demurrage rules (Tr. 2739).

H. P. HUGHES called as a witness and, being duly sworn, testified as follows:

I am Auditor and General Freight and Passenger Agent of the Verde Tunnell and Smelter Railroad. I have a map of the railroad.

(Said document received in evidence as Exhibit No. 239.) (Tr. 2740.)

The company was incorporated in 1912 and built a railway from Clarkdale, Arizona, 6 miles to Hopewell Tumell, Arizona. Later it was extended to Jerome, Arizona, a distance of 5 miles. The whole line was open for traffic in January, 1920. Our total mileage is 10.87 miles, most of which is on a 4% grade with many 24 degree curves. The longest piece of straight track is 870 feet. The road was constructed to serve the mines and smelter of the United Verde Copper Company, but was incorporated as a common carrier to furnish transportation to outside companies. The line was for the purpose of hauling copper ore from the United Verde Mine tunnel to the smelter at Clarkdale (Tr. 2741) and prior to the extension to Jerome most of the tonnage was copper ore of the United Verde Copper Company. When the line to Jerome was opened the traffic [fol. 492] handled for others showed a heavy increase. Over 90% of our revenue is from traffic furnished by the United Verde Copper Company, consisting of copper ore moving to the smelter. In 1926, 1,441,099 tons of freight were hauled, of which 1,305,182 tons were ore. Our only connection is with the Santa Fe at Clarkdale, where the smelter of the United Verde Copper Company is located. Copper ore of the Copper Company is hauled from Hopewell in our cars to the smelter at Clarkdale. The mines of the Copper Company are located at Jerome, a town of

about 8,000 (Tr. 2742). That town is now served exclusively by our railroad. The basis of car hire settlement on our road, shown in Exhibit 12, is only partially correct. We are allowed reclaim only on cars switched between the Santa Fe and the Copper Company smelter at Clarkdale. Our average length of haul is about one-half mile, and we receive $2.70 per car for the service. This switching charge is paid by the Copper Company (Tr. 2743). I have a copy of an agreement outlining the reclaim basis.

(Said document received in evidence as Exhibit No. 240.)

On all other cars interchanged with the Santa Fe on which we receive a line haul, we pay a per diem rate without free time, except that on private cars we pay mileage to the Santa Fe and the Santa Fe settles with the owners. Most of the private cars are owned by the Santa Fe Refrigerator Despatch. Thus, we are allowed reclaim on switch cars, but no free time on cars in line haul movement (Tr. 2744). Of the cars interchanged, about 70% are for switch move and 30% for line haul move. I have prepared a statement of our carload traffic for 1926.

(Said document received in evidence as Exhibit No. 241.)

This exhibit shows the number of loaded cars handled in switch and line haul service divided as between all cars, cars interchanged with the Santa Fe in strictly local service, cars inbound and outbound, and the commodities in those cars (Tr. 2745). The exhibit shows that we handled [fol. 493] 5,967 loads in interchanged cars or 23.4% of the total, leaving 19,571 loads in local service. Of 1,618 loads received from the Santa Fe for line haul most were for Jerome and only 198 were returned loaded. Of 198, 193 were merchandise cars with light loading. 62 cars were received empty for outbound line haul loads. Our company is not a party to any through rates or divisions. Our entire freight revenue is derived from local charges paid by our patrons which are added to the Santa Fe rates to and from the junction. All rates are combinations and the Santa Fe does not shrink its charges. On interchange traffic proportional rates apply on all shipments taking class rates, the proportional rates being lower than the class

rates on local movements. I have here a copy of our local freight tariff (Tr. 2746).

(Said document received in evidence as Exhibit No. 242.)

We apply the proportional rates and the Santa Fe does not shrink at all. Our proportional rates on interchange traffic are lower than those on strictly local traffic. We do all the shrinking. The local traffic shown in Exhibit 241 is handled in 83 cars owned by us. They do not leave our rails except on an occasional switch movement. We appear here to assist the Commission and protect our present reclaim arrangement, as we understand the A. R. A. is endeavoring to prohibit the allowance of switching reclaims to nonsubscribers (Tr. 2747). Our reclaim arrangement with the Santa Fe is satisfactory, but we don't want a rule that constantly menaces it. We also think we should have some free time on line haul movement, since the Santa Fe does not shrink its revenue and has very little terminal expense on our line haul cars; whereas, its own patrons at Clarkdale are allowed demurrage, free time and free terminal switching. In 1926 our average detention on switch cars was 2.48 days and on line haul cars 3.71 days. The revenue to the Santa Fe is the same on both classes and [fol. 494] since practically all detention on line haul cars on our rails is free time allowed consignees, we ask for a free time allowance of 3 days. I have prepared a comparative car hire statement covering 5,698 cars interchanged with the Santa Fe in 1927 (Tr. 2748).

(Said document received in evidence as Exhibit No. 243.)

This exhibit shows that on our present reclaim basis and with 3 days free on line haul cars, we would have paid approximately $1,523 in per diem as compared with an estimated payment of $16,198, had straight per diem without reclaim been in effect. Our increased cost of straight per diem over the basis requested amounts to $14,675 and would have taken 36.4% of our revenue of $40,302.79 on these cars. The exhibit also shows that in 1926 we actually paid $5,670.67 in car hire or 14.1% of our revenue, and that had we been on straight per diem the cost would have been increased by $10,527.33 or 26.1% of the revenue, and that straight per diem would have taken 40.2% of our total

revenue. Our line applies the National Car Demurrage Rules (Tr. 2749) and we have average agreements with patrons covering about 90% of the cars interchanged. In 1926 we collected $244 in demurrage. In the last four years we have made money, but in the four years preceding we lost heavily. When the copper market slumps we slump. For the eight years up to 1926 we had a net loss of $53,-516,04. Our book value in 1926 was $1,436,421.16, which is about the value placed on the property by the Commission as of 1917, plus additions and betterments and less retirements. I have prepared a study of 71 loads received from the Santa Fe in February, 1927 (Tr. 2750).

(Said document received in evidence as Exhibit No. 244.)

The statement shows that our freight earnings on these cars was 9.2% of the total; that the total car days on our line was 39% of the total car days on all lines; and that our average detention per car was 3.5 days and foreign [fol. 495] line detention was 5.4 days.

Cross-examination:

The stock of our railroad is held by the stockholders of the Copper Company which produced about 90% of our traffic. I am quite certain that all our local traffic was handled in the 83 cars we own. We use no foreign cars for that (Tr. 2751). We are able to handle 56 shipments a day on every day of the year, in our 83 cars, as they made two and sometimes three round-trips a day between Hopewell and the smelter. We handle the local traffic quickly because it is handled in train loads of about 25 cars to a train and is loaded very quickly. These cars occasionally make three round-trips and usually two round-trips a day. The difference in detention on local traffic as compared with interline traffic is that the local traffic is train-load service and the facilities for loading and unloading are good (Tr.. 2752). Most of our interchange line-haul business is inbound. It is already loaded when we get it but we have a terminal delay at Jerome. We have no such delay on our local traffic which consists almost entirely of carloads of ore (Tr. 2753). In 1919 we had a deficit of $38,075.17; in 1920 a deficit of $89,249.93; in 1921 a deficit of $126,-

839.75; in 1922 a deficit of $28,274.04; in 1923 income of $63,701.66; in 1924 income of $66,699.12; in 1925 income of $44,579.38; in 1926 income of $53,942.69. In 1927 it is running about like 1926. When we need any money we get it from the copper company. The road also serves the United Verde Extension Mining Company which is an independent outfit (Tr. 2754). It furnishes about 5% of our traffic. Our road did not go on per diem at our request. Prior to May, 1921, we had a demurrage basis of car hire on line haul cars and on switched cars at Clarkdale on which the Santa Fe received a line haul. The Santa Fe had an average demurrage agreement with the copper company, collected demurrage direct and did not charge us anything [fol. 496] In 1921, the Santa Fe notified us that they were going to put the per diem basis in effect (Tr. 2755). On Exhibit 244, I just took one month, and the month shown happened to be the most recent month available. All the cars shown are inbound. We might have had one or two outbound cars, but we did not include them because most of that traffic is merchandise. To get the car days on foreign lines, I took the foreign line waybills, counted to the date of interchange to our road, and added 2 days for detention at point of origin. The average detention of 5.4 days is a mathematical computation (Tr. 2756). I had the waybills and used the date of the waybill from Santa Fe points. Our oil moves in tank cars which are on a per diem basis. In getting the detention on foreign lines shown in Exhibit 244, we estimated that the foreign line paid 2 days per diem prior to the date of the waybill. On Exhibit 243, I have included the mileage paid on private cars in our per diem estimate. To get at the amount we would pay on straight per diem, I took the number of cars interchanged, multiplied by our average detention of 3.71 days (Tr. 2757). The number of cars interchanged included mileage cars. I figured them in as per diem cars. At the present time these cars would not be on per diem under the A. R. A. rules (Tr. 2758). If the A. R. A. rules were applied to our line, we would pay mileage on the cars that we now pay mileage on. All of our traffic moves on local rates from Clarkdale, and the Santa Fe does not absorb our switching charge at Clarkdale. All of our charges are added to the junction point rate of the Santa Fe. I don't know whether we

could get additional income by increasing our local rates because it affects others besides our industry (Tr. 2759). It would only affect other industries to the extent of about 10% of our traffic. If we could get authority to increase [fol. 497] our charges sufficiently, we could get enough money by increasing our charges on the 90% of our traffic furnished by the owning industry. We do not have the choice of going to the owning industry for an increase in rates and going to the connecting trunk line for an allowance in car hire, as we want to keep our rates as low as we can (Tr. 2760). We would get more revenue either by getting a car hire allowance from connecting lines or by increasing the rates to the owning industry. Copper bullion is the metal after it is extracted from the ore, and is about 98% pure copper. Under our reclaim arrangement set out in Exhibit 240, we are allowed a maximum of 8 days on any one car loaded or empty (Tr. 2761). A car loaded both ways is counted as two cars and we would get double what we get for a car loaded one way. We make a per diem report to the Santa Fe of all cars received from them in switching moves. To arrive at the reclaim, we throw out any cars that were on hand over 8 days and divide the total days obtained in that way by the number of cars, doubling up the two-way loads. On cars held over 8 days we throw out the excess days. We make settlements that way month by month. In 1922 we only paid $62 per diem on switching cars (Tr. 2762). At the present time if we need money we borrow it from the owning industry and we pay as we get a chance. It has to advance finances to the railroad as needed and in addition pay our local rates on top of the rates of the trunk line. Our own cars only go off our railroad occasionally, on switch hauls by the Santa Fe (Tr. 2763). If we got the car hire arrangement we wished, we would be willing to extend the same basis to the handling of our cars by foreign lines, but our cars don't go on foreign lines for line haul. They only go in switching service so that there is no per diem on them. We sometimes handle traffic in line haul service which the Santa Fe handles in switching service, and on those cars the Santa [fol. 498] Fe makes a reclaim the same as we do on their cars (Tr. 2764).

J. M. DAVIS was called as a witness and, being duly sworn, testified as follows:

I am Auditor of the Santa Maria Valley Railroad which is a steam road. We connect with the Southern Pacific at Guadalupe, California, and run 4.8 miles to Betteravia. From Betteravia Junction, 2 miles from Guadalupe, we run 17.77 miles to Roadamite. We have one heavy grade, and for several miles the road runs through a canyon and is subject to overflow (Tr. 2765). At the towns reached by the road it serves sugar and feeder companies, vegetable shipping companies, ice companies, a creamery, oil companies and a large live stock industry and various merchants. Our book investment in 1926 was $475,174, which does not include materials, supplies or cash. We have 3 steam locomotives, one caboose, one tank car and one flat car. We have no passenger service and our freight cars are not interchangeable. Our average length of haul is less than 9 miles (Tr. 2766). 85% of our earnings come from hauls less than 10 miles in length. We told the Southern Pacific we thought we should be dealt with like a switch road and be allowed reclaim. I received a letter from the Superintendent of Transportation of the Southern Pacific in June, 1924, saying that he did not see how the Southern Pacific could handle our car hire on other than a per diem basis, since it had to pay $1 per day for foreign cars on its line, including those delivered to its nonsubscriber connections. He also said that since our road was not a member of the A. R. A. and a subscriber to its rules, the Southern Pacific could not allow a switching reclaim. He further said that while the Commission had decided that an industrial road could be placed on a modified demurrage [fol. 499] basis of car hire (Tr. 2767), that could not be done with our road until it was declared by the Commission to be an industrial common carrier. Our average car detention is about one day per car because we handle train loads of beets which we get back in less than one day and on which we pay no per diem. On other interline traffic our detention will average about 3 days. We use foreign cars in local service and are willing to pay full per diem when we do so. The road was built in 1911 by the Palmer Annex Oil Company. Later the stock was owned by the Santa Maria

Oil Fields. In 1925 the stock ownership passed to the La Brea Securities Company owning the oil property formerly owned by the Santa Maria Oil Fields (Tr. 2768) and which also owns the controlling interest in various industries which help feed the railroad. I might be mistaken about that as it might be in the name of Mr. Hancock but he owns the Securities Company. In 1925 our operating deficit was $72,320. In 1926 our deficit was $17,178, but we are showing a little net earning this year (Tr. 2769).

Cross-examination:

The Commission has made a valuation of our property, but I don't know what it was. Of the industries served by us those controlled by the Securities Co. are the Dominion Oil Company and the Rosemarie Packing Company. Their traffic would not be over 10% of our present business. Not more than 10% of our traffic comes from affiliated interests (Tr. 2770). Most of our traffic moves on joint rates, of which we get a division of the rates. Most of our traffic is inbound transcontinental traffic, some of which moves on arbitraries. I would say the greater part of it moves on through rates. Our service is a line haul service by a common carrier (Tr. 2771). We perform no switching service on tracks within a switching district so it is safe to say that all our traffic is interline traffic. None of our cars go off our railroad. We work under the demurrage rules [fol. 500] of the Pacific Car Demurrage Bureau and assess and collect our own demurrage. I have no figures showing the number of foreign line cars handled by us, the detention thereon and the per diem paid (Tr. 2772). We have a lot of sugar and sugar beets outbound. Of 260 cars, 144 of them were fresh vegetables other than potatoes, but we move a lot of sugar at times. The vegetables and perishables move in p. f. e. cars on a mileage basis. We also have a substantial outbound movement of petroleum which moves in tank cars (Tr. 2773). The privately owned tank cars are on a mileage basis, but the Southern Pacific tank cars are not. Our monthly average of traffic for 1926 shows 260 cars, and I imagine that over 200 of them moved in tank cars or refrigerator cars. I think our biggest outbound movement is perishables. In the last two years we have

had poor crops and for the last 3 or 4 years our beet tonnage has been about 40% of normal (Tr. 2774). The perishables I have mentioned all moved in refrigerator cars on a mileage rate. Our line is 22.57 miles long (Tr. 2775) with 1.8 miles of sidings. The road does not subscribe to the per diem rules agreement and reports per diem to the Southern Pacific Company. We pay straight per diem at the present time. We would like to get all we can and our contention is that we ought to be allowed a reclaim of per diem. We want to get rid of paying it. I understand we want 72 hours. I understand we want a reclaim (Tr. 2776). The General Manager said that he would like a basis of 2 days' free time with straight per diem of $1 a day after that. I don't know what our average length of haul is, but most of the traffic is less than 10 miles. I don't know what our revenue per carload is (Tr. 2777).

[fol. 501] A. T. NELSON was called as a witness and, being duly sworn, testified as follows:

I am Auditor of the California Western Railroad & Navigation Company, which operates from Fort Bragg, California, 40 miles east to a connection with the Northwestern Pacific at Willits, California. To reach Willits we cross the Coast Range Mountains at an elevation of 1,740 feet. The ruling grades are 3% on 14 miles with a maximum of 3.3%. There is a maximum curvature of 24%. We operate a branch line 3 miles long from Glen Blair Junction to Glen Blair. The capital stock of the road is owned by the Union Lumber Company which furnishes over 50% of the outbound tonnage. The road also handles the traffic of other lumber companies and serves their communities (Tr. 2778). We operate at a profit. In 1926 we had a balance for transfer to profit of $31,989.25. We own 5 oil burning locomotives, 3 passenger coaches, and a gasoline motor passenger car, 3 cabooses and 70 freight cars, of which 2 box cars and 40 flat cars are interchanged with the Northwestern Pacific and its connections. We subscribe to the Car Service and Per Diem Rules Agreement and are satisfied with our present status. I do not think that the per diem system of dividing the cost of car hire between car users

is equitable as the short line has the burden of terminal delay and free time to shippers (Tr. 2779). For that reason a mileage basis of car hire would be much fairer. We are satisfied to abide by the present per diem rules because we own 42 cars in interchange service. Those cars cost us $1,000 each and the per diem rate of $1 gives us a nice profit on them. Also, when our divisions were fixed, car hire expense was especially considered and included in our divisions. Our situation seems to be unusual in that respect. If it wasn't made up to us in divisions we would complain strongly of having to divide car hire on a time [fol. 502] basis (Tr. 2780).

Cross-examination:

The Commission has tentatively valued our road as of 1917 at $1,800,000. Since then it has been revised by cutting us down from $200,000 which includes a large deduction for alleged depreciation (Tr. 2781). No final value has yet been fixed. We are satisfied with our present car hire arrangement because we feel that we are being compensated through our divisional arrangements. So far as our line is concerned, we are satisfied. We are making our objection as a matter of record. We are satisfied to have our present arrangement stay as it is. We have never given consideration to the use of a mileage basis on our cars used by foreign lines (Tr. 2782). The present basis is fair to us. I have not given consideration to that matter, but I feel that the mileage pro rate is a fair method of prorating the user's time of the car so far as the short line is concerned. We feel our conditions are usually different than those of the trunk lines. We favored dividing the use of the car on a fair basis, which would mean that we would get our connection's cars at reduced rates but that the connections would be paying full rate on our cars (Tr. 2783). In that case we would be getting compensation as a car owner; whereas, in the other case it is a question of prorating car hire cost between users. Our divisions have been established at various times on different traffic. On transcontinental traffic the divisions have been established since 1912 when we started to operate. The cars that we own and on which we receive per diem cost us in the neighborhood of $1,000 apiece (Tr. 2784). They spend probably

200 days a year off our rails and making an allowance for car repairs of $100 a car leaves us approximately $100 for interest and depreciation. All our cars are not in interchange service. We have about 20 cars assigned to yard service. All except two of our interchange cars are flat [fol. 503] cars (Tr. 2785). Our flat cars are wooden cars with wooden underframe which are rather less expensive than steel underframe box cars. In fixing our divisions, I am quite sure that everything including car hire was taken into consideration. If there was any radical change in car hire expense, we would look to the main line carriers for a change in the divisions (Tr. 2786). Our book investment in 1926 was about $2,225,000. I haven't the exact figures.

N. E. KELLER was called as a witness and, being duly sworn, testified as follows:

I am Assistant Traffic Manager of the Cement, Tolenas & Tidewater Railroad and the California Central Railroad. The Cement, Tolenas & Tidewater operates from Tolenas, California, from a junction with the Southern Pacific to Cement, California, a distance of 2 miles, and there is an interchange with the Sacramento-Northern at Armijo Junction, half way between Tolenas and Cement. When a cement mill was planned at Cement the Southern Pacific was asked to build a line from Tolenas to the cement plant, but it declined to do this. The Cement Company was forced to build the railroad from Tolenas to Cement and at the same time proposed the construction from Tolenas to Tidewater (Tr. 2788). In the beginning we did not handle traffic under joint rates, but we do now and receive divisions of those rates. After the mill was constructed at Cement and the railroad placed in operation another mill was constructed at Davenport, California, and the Southern Pacific constructed a line to serve that plant. We then filed a complaint with the Railroad Commission of California (Tr. 2789) to have the main line rates extended to the mills. The railroad is not a subscriber and our divisions of the through rates were fixed by the Railroad [fol. 504] Commission of California on the conditions that existed at that time. The railroad does not operate at a

profit (Tr. 2790). In 1926 we had an actual loss of $19,179.24. We handle approximately 6,000 or 7,000 cars a year of cement (Tr. 2791). We haul the empty cars from Tolenas to the plant, spot them and bring the loaded cars back. Under the straight per diem basis we would have paid $612 for car hire in June. We are on a demurrage basis now and were able to handle that month's business without any demurrage. The Pacific Portland Cement Company owns the railroad (Tr. 2792). It owns all of the stock. The road itself is 2 miles long and has 1½ or 2 miles of side tracks within the plant of the Cement Company. We have about 4 miles of railroad and about half of it is within the plant of the owning industry (Tr. 2793) or at Tolenas. The side tracks at the plant are more extensive than those at Tolenas. Approximately 99% of our traffic is contributed by the owning industry (Tr. 2794). We have our own engines and some cars which are not interchanged with connecting lines. Those cars are used in intraplant switching. The Cement Company pays us nothing for their use (Tr. 2795). The Cement Company pays our tariff rates for the local service in hauling clay from the pit to the Cement Company's plant. They also pay us a tariff switching charge for our intraplant service. We had a deficit in actual operating expenses for several years prior to 1926. The money to keep the railroad going comes from the Cement Company. We have the same basis of car hire settlement with the Sacramento-Northern and the Southern Pacific (Tr. 2796). That is a straight demurrage basis of car hire with 2 days' free time and $2 a day, etc., thereafter. There is no average agreement. We collect and retain our own demurrage. We use no foreign cars in our intraplant service for the Cement Company. We paid no car hire in 1926, and there was no demurrage [fol. 505] accruing on our local traffic (Tr. 2797). If any demurrage accrued, it would be on the interline traffic. If any demurrage accrued in 1926, there would have been car hire (Tr. 2798). I think there was no demurrage in 1926 on local or interline traffic (Tr. 2799). We handle very little traffic for shippers other than the Cement Company. We get a division out of the through rate on outbound cement and inbound supplies are handled on the basis of local rates.

The California-Central Railroad is also owned by the Pacific Portland Cement Company and operates between Chittenden where it connects with the Southern Pacific to San Juan, California, a distance of 8 miles (Tr. 2799). At San Juan it operates to a cement plant owned by the Cement Company. In 1926 the road lost $1,181.51. In that year it paid $902 in car hire. It gets divisions of through rates on cement the same as the Cement, Tolenas & Tidewater. I am not familiar with the original construction of the road (Tr. 2800). So far as its operation and existence is concerned, it is the same as the other cement road and serves a plant which competes with other cement plants on the rails of the Southern Pacific and other carriers. It has some traffic other than cement but 90% or more of the traffic is tonnage to and from the Cement Company (Tr. 2801). I am not prepared to say what a per diem basis of car hire settlement would mean to this road, but it would be considerably higher than we are now paying on the demurrage basis. The Cement, Tolenas & Tidewater is satisfied with its present arrangement, but the California Central is not entirely satisfied (Tr. 2802). We think that car hire on the California Central should be arranged so as to place its industry at San Juan on a basis which would permit that industry to compete with other industries located on the lines of the main line carriers where operations are [fol. 506] of a similar nature. The California Central connects with the Southern Pacific only and has the same demurrage basis of car hire as the Cement, Tolenas & Tidewater (Tr. 2803). It connects with the Southern Pacific at Chittenden. All of its stock is owned by the Pacific Portland Cement Company, and in 1926 it paid $902 in car hire. This car hire was not collected from the industry, as the $902 represents demurrage paid to the Southern Pacific Company, based on the receipt and delivery of cars at Chittenden. We do not pay $902 more in car hire than we collected in demurrage from the industry. I don't know just what demurrage we did collect from the industry (Tr. 2805). In 1926 the line handled some refrigerator cars upon the mileage basis, some of which may be included in the total amount of car hire paid. I said that the California Central was not satisfied with its car hire arrangements (Tr. 2806). We propose to cure that by doing whatever is necessary to put its industries on the same basis as

industries located on the trunk lines. To a large extent the railroad is a plant facility of the Cement Company and any burden on the railroad becomes a burden on the industry. We feel that car hire arrangements should be made so that the industry would be on a parity with industries located on the trunk lines (Tr. 2807). It appears correct to say that we think the industry should be treated by the Southern Pacific as it treats an industry located on one of its side tracks. We get divisions of through rates and that is somewhat inconsistent with my plant facility theory, but that is what a uniform rule will run into when applied to various short lines and industrial carriers. We are not willing to give up the revenue that we receive from divisions in order to put the industry upon the basis that we desire (Tr. 2808).

[fol. 507] R. B. MITCHELL was called as a witness and, being duly sworn, testified as follows:

I am Traffic Manager of the Bay Point & Clayton Railroad (Tr. 2809). It runs from a connection with the Santa Fe at Bay Point, California, to Cowell, California, a distance of 9 miles. We also connect with the Southern Pacific at Bay Point through the Santa Fe, and we have a connection with the San Francisco-Sacramento Railroad, an electric line, at Clyde, California. Almost all of our traffic is for the account of the Cowell Portland Cement Company which owns the stock of the railroad. We operate under divisions of joint rates on cement and various other commodities, as well as of class rates to and from some territories (Tr. 2810). Our divisions were established by the California Railroad Commission under the circumstances referred to by the other roads. We asked that the junction point rates be extended to Cowell since the Southern Pacific had built a 12 mile spur and performed switching on it for the Santa Cruz Portland Cement Company. Before we started to build our cement plant, we asked the Southern Pacific Company to build about 4½ miles of track to it, but the request was refused and we had to build our own railroad. The road is not a subscriber line and operates on a demurrage basis of car hire (Tr. 2811). We are

satisfied with our present car hire basis. About 20 years ago we were under per diem. We could make no other arrangements and had to accept it. The charge was then 25¢ per car per day and we continued under that arrangement until about 9 years ago when we were paying several thousand dollars a year for the use of cars; whereas, conditions at other plants were different. They paid no such charge. The per diem charge would amount to $4,000 or $5,000 a year and we are not in a position to stand such an increased expense. In 1926 we made $2,300 or about 1% [fol. 508] on our investment (Tr. 2812). If we were called upon to pay more per diem it would fall on the Cement Company which would be at a disadvantage in competing with plants not so situated.

Cross-examination:

The traffic that we handle for companies other than the Cement Company is relatively small. The wine, grapes and hay has almost disappeared (Tr. 2813). The road does not subscribe to the National Demurrage Rules but has a demurrage tariff of its own under which it collects its own demurrage. We collected very little in 1926. We handle practically no local traffic. We have about 2 cars that would take care of that. There is an exception, however. We have about half a dozen cars a year that move to industries located on the Southern Pacific and on that traffic we have used foreign cars (Tr. 2814). Those cars usually come in unloaded and are sent back with a load. In 1926 the road handled 3,084 loaded cars in a little more than 3,888 per diem days. It takes about a day and a half to get the car up and back. We have no local traffic and perform no terminal switching on interline traffic. That traffic is all line haul (Tr. 2815). The car hire we paid in 1926 was practically negligible. I recall one year when we paid about $12 against about $5,000 that we would have paid. This road pays practically no demurrage because we get the equipment back as fast as it is possible to do so (Tr. 2816). We have practically no demurrage collections. Our objection to the per diem rules is that per diem which the railroads pays would ultimately be paid by the Cement Company and would put it at a disadvantage with its competitors located on the rails of the Southern Pacific.

That is what we object to. Our demurrage rules differ somewhat from the National rules but are almost the same (Tr. 2817).

[fol. 509] R. J. HOFFMAN was called as a witness and, being duly sworn, testified as follows:

I am Auditor of the San Francisco, Napa & Calistoga Railway. It is an electric line operating between Vallejo and Calistoga and has a traffic agreement with the Monticello Steamship Company operating between San Francisco and Vallejo. We interchange with the Southern Pacific at Napa Junction, from which we handle freight to the Mare Island Navy Yard. I have a folder showing the railroad (Tr. 2821).

(Said document received in evidence as Exhibit No. 245.)

The road has 14 passenger cars, I think 4 trailers and 10 electric motors. We have 2 electric freight locomotives, 2 freight motors, 15 freight cars and some other cars. Most of our traffic is passenger traffic. Our passenger traffic is both interline and local. The interline is with the Steamship Company and we serve local communities through Napa Valley (Tr. 2822). On freight traffic we have an agreement with the Monticello Steamship Company and issue joint tariffs on traffic between San Francisco and stations on our line. We also have an agreement with the Southern Pacific to handle freight between Napa Junction and Mare Island. The point of interchange with the Southern Pacific is Napa Junction and the haul is 7 miles (Tr. 2823). The freight is exclusively for the Mare Island Navy Yard and parties having contracts with it. Most of it is carloads. In 1926 we handled 2,743 loads into and 168 loads out of Mare Island. Of the inbound traffic about 2,636 cars were carloads and 150 were less-than-carload. On the outbound traffic, we had about 68 carloads and 100 less-than-carload cars. Up to August, 1927, we had approximately 951 loads in and 183 loads out. Of these there were 900 carloads in and 100 carloads out, and 51 less-than-carload cars in and 83 less-than-carload cars out (Tr. 2824). All of our interline [fol. 510] freight traffic is between the Southern Pacific Junction and the Mare Island Navy Yard, over a 7 mile

haul. The service is analogous to switching but is handled on a line haul tariff. Our revenues are in addition to the Southern Pacific charges to Napa Junction (Tr. 2825). We pay per diem on this traffic direct to the Southern Pacific without reclaim, the counting of per diem beginning when the car is delivered to us and running until it is returned. In 1926 we paid $3,170 in per diem and up to August 31, 1927 have paid $2,429.50. We apply the average demurrage agreement to the Navy Yard, allowing 48 hours free time with the average agreement, then $2 a day for 2 days and $5 a day thereafter. I have prepared an income statement for the road for 1926.

(Said document received in evidence as Exhibit No. 246.) (Tr. 2826.)

I also have a similar statement for the first eight months of 1927.

(Said document received in evidence as Exhibit No. 247.)

I am not sure that I can speak for the company on what we want. My instructions were that anything would be better than we are now getting. I think we should be treated practically as well as an industrial plant, as we are practically nothing but a switching road between Napa Junction and Mare Island. We receive cars from 10 o'clock in the morning until 1:30 in the afternoon and they are at Mare Island by 2:30 in the afternoon. We leave Mare Island at 3:30 in the afternoon (Tr. 2827) and the cars are back on the interchange track by 4:30 the same day, as soon as they are released by the shippers. The shipper has 48 hours free time. In 1926 our average detention was about 2 days per car. If we were on a demurrage basis the same as the shipper, we would have practically no car hire expense. So far as I am concerned, I would be satisfied to have a reclaim equal to the actual detention on our line. In 1926 our book [fol. 511] investment was a little over $2,000,000 (Tr. 2828). I think it was $2,187,000. We make no money and just about pay operating expenses. The stockholders of the road live in Napa Valley and some stock is held by outside people.

Cross-examination:

Our own cars do not go onto the Southern Pacific. Our charge for the service to and from Mare Island is an arbi-

trary rate over the Southern Pacific charge (Tr. 2829). It is 5¢ a hundred on all l. c. l. and carloads with the exception of rock, sand and gravel which is 45¢ a ton. The principal traffic consists of building material, flour, canned goods and machinery. The outbound is mostly junk, obsolete machinery, etc. I reach the conclusion that this service to Mare Island Navy Yard is a switching service, not so much because our line is 7 miles long as because under our agreement with the Southern Pacific we are restricted exclusively to the Mare Island traffic (Tr. 2830) and further, we deliver the cars practically within an hour after getting them. The traffic is handled under a line-haul rate and not under a switching charge. In my opinion it is a switching service because it is a short haul; just because they publish a line tariff does not make it such. I cannot say whether the company would be willing to substitute a switching charge for its line haul charge. If the compensation was the same, I don't doubt but that it would (Tr. 2831). I am not sure whether the switching charge would be as high. We could only agree to publish our charge as a switching charge if we got as much money as we now do. I haven't given it enough consideration to answer satisfactorily. I say that any basis of car hire would be better than the present one because it would not cost us so much. That is our only reason for criticizing our present basis. I only suggested that our railroad might be treated as an industrial plant by the Southern Pacific, although we are running a railroad. I consider that an industrial plant would not give any more business and would at the same time deprive the line haul carrier of per diem. It may be that instead of giving the Southern Pacific business it gives it to us, but the Southern Pacific would not get the business if it wasn't [fol. 512] for the little line. I think we would be satisfied with the reclaim such as switching lines get (Tr. 2833). I don't know that a lot of switching lines don't get reclaim, but I would not necessarily be satisfied to be in that position. I don't want to say that we are trying to get out of paying a car hire bill, but we would like to pay as little as possible. I do not have the financial figures for the year 1925 with me (Tr. 2834). On Exhibits 246 and 247 the revenue shown in account "107 Freight Revenue—Mare Island Freight Line" is the income that we received on the traffic

between the Southern Pacific and Mare Island. With the receipt of almost $41,000 in revenue the payment of $3,170 in car hire is a good per cent interest. Under abnormal circumstances it could have been worse. We are a member of the Pacific Car Demurrage Bureau (Tr. 2835). So far as I know, we have been paying straight per diem right along. The Mare Island branch did not operate until the latter part of 1920. It stopped then and reopened in January, 1921, and has been operating ever since. We had no car hire arrangements with the Director General. We handle freight traffic over our entire line (Tr. 2836). All of our freight traffic comes from the Southern Pacific and on it we receive 5¢ a ton on all commodities, carload and less-than-carload, and 45¢ a ton on rock, gravel and sand. That covers all our traffic. On the other freight we receive charges in accordance with the tariffs but the Mare Island traffic is the only traffic interchanged with the Southern Pacific (Tr. 2837). The rates of 5¢ and 45¢ are the arbitraries from the junction point. Before our line was built, I think the Mare Island Navy Yard was served by tugs from San Francisco. The building of the line made it possible for the traffic to move via the Southern Pacific. In speaking of the service as switching service, I had in mind that there was no intermediate traffic between Napa Junction and the [fol. 513] Navy Yard (Tr. 2838). It is just a movement of traffic between the industry and the railroad. The $211 demurrage collected in 1926, as shown on Exhibit 246, accrued on the Mare Island traffic. Conditions sometimes require the holding over of the cars. When I spoke of the time of getting the cars back, I was speaking of the time they are released by shippers (Tr. 2839).

Examiner Rice: The hearing is adjourned until October 5, 1927, at Houston, Texas (Tr. 2840).

[fol. 514] Proceedings at Houston, Texas, October 5, 1927

Examiner Rice: The Interstate Commerce Commission has set for further hearing at this time and place Docket 17801, Rules for Car Hire Settlements between Railroads, and the various cases which have been consolidated therewith (Tr. 2850).

J. W. McCULLOUGH was called as a witness and, being duly sworn, testified as follows:

I am a practicing accountant. I have been employed in railroad service since about 1892. I was Auditor of the Frisco Lines in Texas and Louisiana and of other railroads. In 1920, I resigned to practice public accounting. I have represented a number of short line railroads before the Commission on valuation and other questions (Tr. 2851). I have prepared a statement on behalf of short line railroads for presentation on this hearing. I was employed by the Trinity Valley Southern Railroad and the Moscow, Camden & San Augustine Railroad to prepare a statement for each of those companies (Tr. 2852). The Trinity Valley Southern Railroad is a common carrier by steam, organized in December, 1901. It operates from Dodge, Texas, where it connects with the International-Great Northern to Oakhurst, Texas, a distance of about 6 miles. The capital stock is 200 shares at $100 each, or $20,000, which is outstanding (Tr. 2854). The road owns no freight car equipment and depends upon the International-Great Northern for car supply. It is not a member of the American Railway Association but is a member of the Short Line Railroad Association. It does not subscribe to the A. R. A. Car Service and Per Diem Rules, but reports and pays per diem on all railroad owned equipment to the I.-G. N. and directly to the owner of private equipment. Owing to one-way movement of all traffic, practically one-half of the average detention is consumed in empty movement (Tr. 2855).

[fol. 515] Mr. Duff: The questionnaire circulated by the American Short Line Railroad Association will be introduced in evidence as an exhibit.

(Said document received in evidence as Exhibit No. 248.)

The Witness: Assuming a load for each empty and an empty for each load, the detention of equipment in revenue bearing traffic can be fixed at about one-half the time shown in the exhibit. The exhibit shows that of 1435 cars received from the I.-G. N., 296 under load and 1139 empty, 1403 were redelivered under load and 1355 in carload movement. If cars in l. c. l. movement were eliminated because of light loading, it would increase the average load per car and

decrease the number of cars required for service (Tr. 2856). Because of Per Diem Rule 9, which requires a report to be made for each calendar day as of midnight, and that the time of delivery of cars on interchange tracks shall be the date and time reported by the delivering road, the company is required to maintain both freight and passenger service or suffer a per diem penalty of one day on all cars set over to it between 12:01 A. M. and the departure of its passenger train which is controlled by the arrival at Dodge of the I.-G. N. passenger trains. Without ordinary freight train service, cars interchanged between noon and midnight would not move from Dodge until the afternoon of the next day, would be available for loading on the second day, and be redelivered on the third day. This would be a minimum dentention (Tr. 2857). Even with established freight train service, a loss of time is sustained under Rule 9 which fixes midnight as the interchange hour. If the provisions of Per Diem Rule 6-B were modified, we might be able to secure some relief by negotiating with our friendly connection the I.-G. N. Short lines should not be required to furnish train service in excess of the demands of the traffic, as the burden upon revenues is too great. If that [fol. 516] revenue is to be burdened with per diem because of circumstances which cannot be overcome except by operation of excessive trains, it is better that the trains be provided. A railroad should not be required to go beyond operating trains which will afford the greatest public convenience and adequately provide for the traffic (Tr. 2858). My first exhibit is a statement of the income account of this railroad for the 5 years from 1922 to 1926, showing an average operating loss of $1,304.34 per annum.

(Said document received in evidence as Exhibit No. 249.) (Tr. 2859.)

The next exhibit shows the revenue freight carried by commodities for the 5 years 1922 to 1926, both originating and received.

(Said document received in evidence as Exhibit No. 250.)

The figures on Exhibit 250 refer to tons. My next exhibit shows the equipment owned by the railroad and discloses no freight car equipment (Tr. 2860).

(Said document received in evidence as Exhibit No. 251.)

My next exhibit shows the freight traffic statistics for the 5 years ending December 31, 1926.

(Said document received in evidence as Exhibit No. 252.)

This exhibit shows that during the period covered about 20% of the freight revenue was consumed in car hire. The freight revenue was about 91% of total revenue and about 18% of total revenue was absorbed in providing necessary freight equipment. This situation, compared with the situation on Class I carriers, shows the necessity of providing this carrier with substantial relief (Tr. 2861). The final value of this road, as fixed by the Commission, was $44,575. More than 10% of total operating revenue in the past 5 years was consumed in car hire, leaving 70% or approximately $17,000 to cover maintenance, operation and taxes, less than $3,000 a mile. Thus there is no prospect of any return to the owners upon their investment in the road. I am calculating that 6% upon $44,575 will absorb about $2,700 (Tr. 2862). That percentage represents about 30% [fol. 517] of the total freight revenue and the 70% is the difference. The fact that the owners of the railroad also own land and operate a saw mill in connection therewith should not be considered in deciding this case. The traffic originating on this railroad is the result of this industry, and the revenue derived from its transportation is participated in by all railroads. This road initiates traffic to the benefit of the transportation system as a whole, but is denied participation in the distribution of the net railway operating income thus produced. The divisions of this railroad from joint through rates were established by the Commission in the Tap Line Case when the per diem rate was less by more than one-half (Tr. 2863) of the present rate. The increase in per diem has not been met by an increase in our divisions. Without considering the reasonableness of the per diem rate of $1, we think this fact imposes an undue burden upon our revenue. It makes no difference to us whether we get our share in the prosperity of railroads by a modification of the per diem rules, by being permitted to negotiate for free time allowances on freight cars, or through an adjustment of divisions, but we suggest the former as more expeditious. For the 5 years

ended in 1926, the railroad operated at an average loss of $1,304.34 per year. They not only earned no return, but its owners had to furnish more than $1,000 a year to continue its operation. Owners of similar industries have not been called upon to make any such contribution. We urge that any order made be retroactive to January 1, 1922. I have some additional exhibits on behalf of this railroad (Tr. 2865). My next exhibit is a summary of earnings and per diem data on 8 inbound loads and 19 outbound loads.

(Said document received in evidence as Exhibit No. 253.)

On the 8 inbound loads, our line got 13.6% of the revenue (Tr. 2866). $47 per diem accrued on these cars, taking the date of the waybill and the date of delivery as a [fol. 518] basis for calculation and of this amount this carrier assumed 32%. On the outbound cars, we received 14% of the revenue, but do not have the per diem information because we could not trace the cars. The cars shown are representative because taken at random. They were not selected to make a radical showing (Tr. 2867). I think that the percentages would apply throughout the year and continue through other years. I have an additional exhibit marked "Exhibit F" (Tr. 2868).

(Said document received in evidence as Exhibit No. 254.)

On the 27 cars covered by Exhibit 253, we paid straight per diem of $68. With 2 days' free time we would have paid $21. Under the demurrage basis we would have paid $18. On mileage we would have paid $4.32, at 1½¢ a mile and $5.76 at 2¢ a mile. On 679 cars handled between October, 1926 and February, 1927, we paid per diem of $2,009. With 2 days' free time, the per diem charge would have been $869. On a demurrage basis we would have paid $1,347, on mileage at 1½¢ a mile $122.22 and on mileage at 2¢ a mile $162.96. My next exhibit is a comparison of system and foreign cars in loaded movement in joint haul traffic.

(Said document received in evidence as Exhibit No. 255.)

This exhibit shows that on inbound traffic 30% of the cars were system cars, and that on outbound traffic (Tr. 2869) 43% of the cars were system cars. By "system

cars" I mean I. G. N. cars or cars of the system of which the connecting line is a member, and by "foreign cars" I mean equipment owned by railroads other than our connections. By "system" I mean the Missouri Pacific system (Tr. 2870). In saying that excess train service should not be required of short line railroads, I was referring to the road covered by my testimony. It could be applied, however, to the railroads as a whole. I make the claim for short lines particularly because of their inability to equalize an operating disability at one point by an advantage at [fol. 519] another. I speak only for our own lines, but if a short line has only one connection there is no opportunity for it to equalize disadvantage by advantage (Tr. 2871). I have had occasion to study the statistics and figures of a number of short line railroads, and find that a situation common to all short line railroads generally obtains as a general proposition. Generally they have but one trunk line connection, and the operating disability applying to one usually applies to another. I am speaking generally of operating conditions on short line railroads. I claim that a modification of the per diem rules offers a means for expeditious relief (Tr. 2872). Our line is operating at a substantial loss and has had its divisions fixed by the Commission. Since 75% of its traffic moves to interstate destinations no relief can be expected by way of increased revenue, but the Commission can require a modification of rules between the carriers according to equity. If my lines were permitted to drive an agreement with their trunk line connections for 48 or 72 hours free time, the saving in per diem would make up for the low division. The latter has been fixed, and we would have to have a rehearing to secure relief from that source. The Commission has authority to afford that relief in this proceeding. Our division on interstate traffic is 2½¢ a hundred pounds and applies to all classes of traffic (Tr. 2873). That is the maximum rate. I did not go into the divisions on l. c. l. freight, but on our main commodities we get 2½¢. We pay the $1 per diem without any free time or concession. The Trinity Valley Southern Railroad is owned by A. C. Ford and his associates (Tr. 2874). Practically the same officers own the lumber company that I referred to as owning the railroad. The railroad was built for a lumber company and the stock of both is owned by the same people. The lumber

[fol. 520] company is the Oakhurst Lumber Company. The stock of the railroad is owned by individuals and not by the industries, but the same individuals control both industries (Tr. 2875). We are required to operate our passenger train out of Dodge about noon but the I. G. N. will not set freight equipment over to us in the evening. We have to get those cars before 12 o'clock if we get them at all. We get them early in the morning and operate our freight train in the morning so we can get a full day on the car. We suffer the penalty of losing a whole day if we run a mixed train. Cars set over to us at 3 o'clock in the afternoon would be interchanged at midnight, but we would not take them until 12 o'clock the next day. Our complaint is that the method of interchange requires us to deliver our freight cars separate from our passenger cars. We have to operate our passenger train to get the I. G. N. passenger train (Tr. 2876), and must then operate a freight train to save the penalty. We don't think we should be required to operate both. My thought is that the short lines form a part of the whole transportation system. The Transportation Act requires the Commission to adjust rates so that the railroads will earn about 6% on their property, but the Congress did not intend to cut out the short lines. If their division of rates does not yield their 6% the relief should be accorded them in some other direction (Tr. 2877). I think that because we are not earning 6% upon our investment, we are entitled to relief on freight car cost to the extent that it should not be a greater (Tr. 2877) proportion of the total cost of car hire than the revenue which we receive from the traffic bears to the total revenue on the shipment. I don't recommend that, but say that we should have at least that much relief. That would give us 48 hours to 72 hours free time, which would give us our cars for practically nothing. I do not think we should get them for practically nothing because we are not making [fol. 521] a fair return on investment (Tr. 2878). Regardless of what we pay for our equipment, I think the Commission should protect us in our return on investment. I don't care whether we get a fair return through using freight cars for nothing or whether we get it through divisions. If we get cars for nothing, it does not mean that the road owning the car gets nothing for the car because they get theirs in the shape of revenue. In lieu of the reve-

nue, we ask relief on car hire (Tr. 2879). The I. G. N. should take care of the car hire on the 402 foreign cars shown in Exhibit 255, since it gets a larger part of the revenue. It is not our idea that the I. G. N. should pay our bills, but the trouble is it is not allowing us proper revenue. We are operating a railroad as a whole. If we got larger divisions, we could take care of car hire, but since the divisions are fixed we can't do it. My authority for saying that we cannot get increased divisions is because 75% of our traffic moves to interstate destinations (Tr. 2880). I meant that divisional relief could not be secured except by hearing, and we now have an opportunity for obtaining it through per diem. Our divisions on interstate traffic were fixed by the Commission, but we could have another hearing. I am not saying that the Commission would not give us higher divisions, but we want relief now and need it now. We own our own locomotives but occasionally rent them (Tr. 2881). If we could have gotten them for nothing we would have decreased our expenses in an average year by about $1200. I think that you get entirely too much rental for locomotives when renting them to small lines, and that the Association rates are out of line. I think the Association publishes a rate of $25 a day, although I have forgotten just what it is. I know it was substantially increased. In the answers to Questions 7 and 8 on Exhibit 248, we meant that the average detention was $3.29 days per car. I think we got the total detention by mul- [fol. 522] tiplying 1435 or *or* 1437 by 3.29, but I am not sure (Tr. 2882). The statement was prepared by the superintendent. On the next page, the 403 cars handled in intermediate service should be in Column 9-A instead of 9-B, loads originating on reporting cars. We retained the demurrage which we show as collected in Exhibit 248. We do not show it as a deduction from car hire expense but include it as non-operating income. In Exhibit 253 in figuring per diem expense, we did not show any demurrage collected as a credit (Tr. 2883). The answer to Question 17 on Exhibit 248 is a statement of the basis of car hire that this road has now asked for. The operating revenues are the same all the way across in Exhibits 248 and 249. In Exhibit 248 we show a deficit in 1925 of $787.38, and on Exhibit 249 I show income of $1983.84. I took my statement from the records of the company (Tr, 2884) and that

amount was reported to the Commission. Item 10 of Exhibit 249 is intended to show net railway operating income. It is 5.92 miles from the Lumber Company to the I. G. N. connection. In getting up Exhibit 253 we took the actual date, the date of the billing and the date it was transferred to us. One shipment moved January 1 and was interchanged to us January 6, which would be 5 days, and we added 2 days, making 7 days (Tr. 2885). The 2 days is the free time allowed for loading on the trunk line. I don't know whether the trunk line paid more than 7 days per diem on the car. It may have had it for some days, hauling it to the point of origin for loading and might have had some per diem. We did not know just what happened to that particular car. We took the date of delivery, the date of the waybill and added 2 days for the loading. About 91% of our outbound traffic is for the Lumber Company. A good part of the inbound traffic is also for the industry (Tr. 2886). I would say about 90% of outbound and inbound traffic is for the Lumber Company. Our railroad connects with the I. G. N. which is controlled by the Mis-
[fol. 523] souri Pacific at Dodge. On Exhibit 252, I took the number of cars loaded and averaged the tons per car and the distance hauled, and produced the actual number of cars required for the service. In 1926 my computation shows that there were 1646 cars with an average detention of 3.01 days. We took the average load per car, and in order to determine the number of cars (Tr. 2887), we divided the average load into ton miles and thus determined the number of cars required for the service. We apportioned that number of cars between loaded and empty, on the basis of freight car miles. We got the average load per car by dividing the loaded car miles into the per ton miles. In 1925 the actual number of inbound cars was 1435, 296 loaded and 1139 empty (Tr. 2888). I don't know what basis of car hire settlement we had during Federal control. On interstate traffic we get no revenue in addition to the 2½¢. I think that amount was fixed in 1912 or 1913. We did not participate in the general increase in rates on September 1, 1920. Our line was probably too short (Tr. 2889). Nor were we affected by the reduction in 1922, so that I think our division is at the same figure that was fixed in 1913. In referring to the interchange, I said that cars were interchanged to us at 12:01 A. M., and

that setting there after our train departs we lose a day. We are required to operate our passenger train out at noon in connection with the I. G. N. passenger train. On intrastate Texas traffic we get from 6 to 3¢ per hundred pounds, depending upon the rate and destination. We get more on that traffic than on interstate traffic, but the preponderance of traffic is interstate. About 75% is interstate. My impression is that the per diem rate when the divisions were fixed in the Tap Line Case was about 35¢.

I have compiled a statement for the Moscow, Camden & San Augustine similar to that for the Trinity Valley Southern (Tr. 2891), except that I was unable to get information [fol. 524] on specific carloadings. I have an exhibit showing the income account of the railroad for the years 1922 to 1926.

(Said document received in evidence as Exhibit No. 256.)

Its average net income was $318.06 a year. My next exhibit is a statement of the freight traffic statistics for the same 5 years. On the average, hire of freight cars was 17.30% of freight revenue (Tr. 2892).

(Said document received in evidence as Exhibit No. 257.)

My next exhibit shows the commodities handled for the same 5 years under general headings.

(Said document received in evidence as Exhibit No. 258.)

My next exhibit is a statement of equipment owned.

(Said document received in evidence as Exhibit No. 259.)

The Moscow, Camden & San Augustine is a common carrier by steam, and was organized in June, 1898 (Tr. 2893). It operates from a connection with the Houston, East & West Texas Railway at Moscow, Texas, to Camden, a distance of 7 miles. The capital stock is $50,000 which is outstanding. It is owned by individuals who, with minor exceptions, own and operate large tracts of land and timber and a mill contiguous to the railway (Tr. 2894). It owns no freight car equipment and depends upon the Houston East & West Texas Railroad for its supply. It is an associate member of the American Railway Association and a member of the American Short Line Railroad Association, but is not a subscriber to the A. R. A. Per Diem Rules. It reports

and pays per diem to the Southern Pacific for all railroad-owned cars interchanged from that line. Owing to the one-way movement of all traffic, one-half of its average detention is consumed in empty movement (Tr. 2895). I have the answer of the railroad to the questionnaire of the Short Line Association.

(Said document received in evidence as Exhibit No. 260.)

If we assume a load for each empty and an empty for each load, the detention of the equipment in revenue traffic [fol. 525] can be fixed at about one-half of the time shown in our report. In 1925, of the 1916 cars received from the H. E. & W. T., 513 under load and 1403 empty, 1845 were redelivered under load. Eliminating l. c. l. cars, because of the light load, from the computation shown in Exhibit 257, the number of loaded cars is borne out by the actual count (Tr. 2896). The road provides mixed train service daily in each direction, connecting with the H. E. & W. T. trains which pass Moscow. The schedule of our trains is controlled by the arrival of the H. E. & W. T. trains at Moscow, and it is imperative that the service be maintained. Thus, we are rarely able to utilize freight equipment from the H. E. & W. T. on the date of interchange, which results in a per diem penalty of at least one day. We should not be required to provide excessive train service, but to escape the penalty of one day per diem on freight equipment delivered, it is required to provide (Tr. 2897) additional service at heavy expense. As shown by Exhibit 257, for the 5 years ending in 1926, 17.30% of our freight revenue was absorbed by car hire. Our freight revenue was 93% of our total operating revenue. Of that car hire consumed more than 16% of our total operating revenue. If we also deduct a return of 6% upon the value of our property, as fixed by the Commission, namely $76,456, an additional 10.7% of total operating revenue is absorbed, leaving less than $4,500 a mile to cover maintenance, operation and taxes. Our divisions of joint rates were established by the Commission in the Tap Line Case, at which time the per diem rate for the use of freight cars (Tr. 2898) was less by more than one-half of the existing per diem rate. The increase in per diem has not been met by increases in our divisions, and we urge this as an undue burden upon the

compensation of this carrier for its transportation service. The fact that the owners of the railroad are the owners of an industry producing 90% of its traffic should not be a [fol. 526] factor. The traffic moves to all parts of the country and the revenue therefrom is received by all railroads, so that our road initiates traffic for the benefit of all, but is denied a share in the net income produced. We do not care whether we get our share of railroad prosperity through a modification of the per diem rules, by being permitted to negotiate with trunk lines for free time on cars, or are given an adjustment in our divisions (Tr. 2899). Modification of the car hire rules is the simplest means of expeditious relief. For the 5 years ending in 1926, this road received an average return upon the value of its property equal to about four-tenths of 1%, which means that the property has been given to transportation for nothing. We, therefore, think that relief should be granted retroactively to January 1, 1922. This railroad has no special concession on per diem except that the time of interchange is 11 A. M. instead of 12:01 A. M. That is not in accordance with the rules of the A. R. A. (Tr. 2900). It is my thought that the members of the Association should be given reasonable discretion to make changes in the rules at all points, since the carriers are permitted to fix their own divisions and rates, except where the Commission has intervened. I see no reason why the Southern Pacific should be denied liberty of action in dealing with its short line connections on car hire, and I think it is intended that the carriers should deal fairly between themselves in that matter and in the matter of divisions (Tr. 2901). I should say the Southern Pacific is content to protect itself on car hire, just as it protects its revenue in divisions. I do not think that any general rule could be applied to all short lines (Tr. 2902). For example, between our railroad and the H. E. & W. T. passenger trains, if those trains change we will have to change our train service, which is also true of the Trinity Valley Southern. I understand that formerly carriers were [fol. 527] permitted by the A. R. A. to deal with their short line connections. I think they have been operating under the present rule since 1922. Prior to then, I suppose

they operated without such a rule from the date of the organization of the Association (Tr. 2903). I see no difference between the right of members of the Association to bargain with respect to divisions and to bargain with respect to the car in which freight is transported, and I think that a rule denying the trunk lines that right is unreasonable and unjust (Tr. 2904). The 4 days average detention shown in Questions 7 and 8 on Exhibit 260, includes the loaded and empty cars shown at the top of the page and is the total average detention per car. We can get the total number of days detention by multiplying 1916 by 4. The plan of car hire we recommend for this road would cut its car hire bill about in half, since we are asking for two days free and have an average of 4 days' detention (Tr. 2906). The other half of our car hire bill would probably not be taken care of by our demurrage collections. In 1925, our 2 days' free time, plus the demurrage of $1559 would have almost relieved us of car hire. I think this should be done because this little railroad is in need of relief and car hire should be distributed between carriers participating in traffic on the basis of revenue, rather than with reference to particular earnings (Tr. 2907). In 1925, we had car hire expense of over $7,000, but had an income on our book investment of almost 7%. If we had had 2 days free in that year we would still have had to pay about $2200 in car hire, which would have run our net railway operating income up to about $3,000 or about 4% on our value of $77,000. Correcting that statement, in 1925 if we had saved $2,500 or $3,000 on car hire we would have received about 8% and in 1922 we would still have had about 8% (Tr. 2908). I don't know why we had the slump in [fol. 528] 1923, nor why we were in the red, although our revenues increased. We may have had some storms or other casualties. The railroad is owned by individuals who own W. T. Carter & Bros. Company, which operates a mill and was built by the individuals to serve the mill that they owned (Tr. 2909). The road was originally projected for a distance of 65 miles, but only 7 miles of it up to the mill was built. The road has no connection with the Gulf, Beaumont & Kansas City, which is now a part of the Santa Fe (Tr. 2910). I think that if it can be shown in this case that car hire is a burden and is the cause of a railroad not

making any money, the Commission has power to grant relief through that source. I think it depends entirely upon division of the revenue. If railroads split the revenue on an equitable basis, I think they should stand their car hire in the same proportion, even though the car hire produced an operating deficit. I say that because they are running a railroad and ought to stand the ups and downs of a railroad (Tr. 2911). I think our railroad should be considered as a whole, and if our property is not earning money, it is the duty of all the railroads to make arrangements whereby it can make some money, as all railroads are entitled to earn a fair return on the value of the property used in transportation service. If the immediate connection of a short line is earning 6% on its property and continues to earn that much after it has distributed its cars without charge, it is still earning all that it is entitled to receive (Tr. 2912). If the connection, however, is not making any money, I think it would be the duty of the Commission to readjust rates and divisions so that it would be able to make money. I think that feeder lines which customarily have no equipment are in a special class different from that of the trunk lines, and if it has no equipment its case is like that of an industry (Tr. 2913). The freight originated on a short line that serves industries and towns is desirable [fol. 529] to the trunk line which should be glad to furnish equipment to get the freight. When a trunk line delivers equipment to an industry for loading and return, it is doing the same thing as it does when it delivers a car to a short line for the same purpose, since the short line ordinarily does not have a long haul (Tr. 2914) and the revenues are proportioned to the extent of the service. I think these facts put feeder lines in a separate class and at a great disadvantage. I would say that it would be fair and just for the A. R. A. to amend its rules so as to permit the trunk lines to take these matters into consideration in their discretion, and that is what is involved here. There is no question of the Commission requiring the Southern Pacific to give our road equipment for nothing. We want Rule 6-B abolished so that the trunk lines can negotiate with short line connections (Tr. 2915). As between our company and the Southern Pacific, cars are interchanged at 11 o'clock A. M. instead of 12:01 A. M. I am sure it is in

effect, but I don't know when it became effective. It is 7 miles from the lumber mill on our railroad to the connection with the Southern Pacific, and that is the entire length of the railroad (Tr. 2916). It has practically no side tracks. About 75% of its traffic is interstate. We interchange no substantial number of cars for which we pay on a mileage basis. About 90% of our traffic is handled for the Carter Company. During Federal control the road signed the waiver agreement, and I think had 3 days' free time (Tr. 2917). Our road files reports with the Commission, and I am willing that they should be examined for the 5 years from 1922 to 1926. Our road gets 2½¢ on interstate traffic and rates graduated down to 3¢, depending on the rate on intrastate traffic (Tr. 2918). It is a tap line road and has tap line arrangements, the rates being in cents per hundred pounds.

[fol. 530] A. P. RUDOWSKI was called as a witness and, being duly sworn, testified as follows:

I am Vice President of the Dardanelle & Russellville Railroad and am familiar with the purpose of the present inquiry (Tr. 2919). The railroad extends from North Dardanelle and Dardanelle to Russellville, Arkansas, a distance of about 5 miles, with a short branch, thus aggregating 5.317 miles of main track with 1.05 miles of yard tracks and sidings. A total of 7 miles is operated. The line is incorporated in Arkansas, and was placed in operation in 1884. It has no bonded indebtedness and has never been in the hands of a receiver. It handles a variety of traffic, the principal commodities being coal and cotton, with coal being the principal tonnage and producing the principal revenues. The road is primarily an originating carrier and per diem charges are of moment. We have 9 open top cars for interchange service (Tr. 2920), but as a general rule they are used in local service. The road is an associate member of the American Railway Association, a subscriber to the Per Diem Rules Agreement and is also a member of the Short Line Association. The mines served produce Arkansas Anthracite coal of the same quality as that produced on the Missouri Pacific and Montana Railroad. The coal produced on our line, therefore, competes with that produced on the Missouri Pa-

cific, and the Montana Railroad, and also with coal from western Arkansas and eastern Oklahoma. In round figures we paid for car hire in 1919, $5,741; in 1920, $5,627; in 1921, $5,911; in 1922, $1,775; in 1923, $4,334; in 1924, $5,225; and for the first six months of 1927, $3,336. 1922 was not representative because of a strike in the mining industry; and 1925 and 1926 are also not representative due to labor troubles (Tr. 2921). In 1923, our car hire payments represented 10.25% of gross freight revenue; in 1924, 11.26%; [fol. 531] and for the first 6 months of this year 28.82%. We concede the right of the owner of a car to receive just compensation for its use, but Paragraph B of Per Diem Rule 6 is too rigid and when enforced works a hardship on our railroad. Conditions vary in different parts of the country and also vary as between trunk lines and short lines. The exhibits filed showing deviations from the Rules Agreement substantiate our view that the deviations result because the trunk lines have found Paragraph B of Per Diem Rule 6 unworkable, due to the difference in conditions (Tr. 2922). Our road is an exclusive connection of the Missouri Pacific and should extend to our mines the same car distribution rules as are in effect at Missouri Pacific mines. In January, 1923, per diem on open top cars was so high that we established a demurrage charge of $1 a day on cars held at mines for billing. In other words, we allowed actual free time required in loading and then allowed 48 hours free time for billing. We did this to compensate us for costs where cars were held after loading for billing in excess of 48 hours. The mining industry in Arkansas serves an agricultural territory, and our coal, as well as that on the Missouri Pacific and Montana Railroad, is primarily a domestic fuel. The slack goes to smelters in Oklahoma and Kansas for roasting and fluxing ores. Coal is crushed and sized in the same manner as Pennsylvania Anthracite is (Tr. 2923), and the mines make 4 sizes for commercial or domestic use and then the slack. In the spring the storage demand is uneven, and while the mines may have a market they do not have sufficient demand for particular sizes. In the Southwest there is always a surplus of open top cars in the spring and with enough cars the trunk lines are liberal in placing equipment and permit mines to carry surplus cars up to the capacity of mine tracks. Thus, the Missouri Pacific can start operation with [fol. 532] enough cars to permit an excess over a day's

rating; whereas, if we did this our car hire cost would frequently be more than the earnings from the tonnage. A different situation may exist a few miles east with a short line that produces bauzite or another line which handles forest products, or some other commodity (Tr. 2924). In our case the solution of our problem is the abrogation of Paragraph B to Rule 6, so that the negotiation of per diem bases can be directly negotiated between the short line and its trunk line connections. We are willing to abide by the per diem rules on all equipment, except that on open top equipment when there is a surplus of cars in the district and when the trunk lines deviate from car distribution rules, we should be either given the right to negotiate for temporary relief or we should be allowed actual detention on cars from time of loading to time of billing. Our obligation is to get the cars out and to get them back. We are now passing the penalty above the point where we can bear it on to the shippers who resent that. They continually complain that if they had a connection with any other trunk line they would be relieved of the burden of paying demurrage (Tr. 2925) and that in spring and summer when mines on the main lines start they must start in order to supply their customers. The main lines permit the carrying of cars without charge and even waive car distribution rules; whereas, I charge them demurrage of $1 a day for time in excess of the 48 hours allowed for billing. I have prepared an answer to the questionnaire of the Short Line Association.

(Said document received in evidence as Exhibit No. 261.)

I would like to change the answer to question 17-B, in Exhibit 261, to conform to my testimony, but there are no exceptions except on coal cars (Tr. 2926).

Cross-examination:

My road is not connecting with any mine served by it, but some of its stockholders are interested in the mines. I don't know just to what extent there is a joint ownership [fol. 533] of stock, but the individuals who own the mining company have a substantial stock interest in the railroad. We have 7 directors and 4 have no mining interest at all (Tr. 2927). As individuals, those that own the mining company are heavily interested in the railroad, but I cannot say whether they have a controlling interest in both companies.

The name of the mining company is the Bernice Anthracite Coal Company, and it is the only one now in operation. It has operated 4 or 5 years. Most of the time coal constitutes about 75% of our traffic. In some years it would be only 40% and in other years 90%. A small part of the other 25% of our traffic would also be for the mines (Tr. 2928) as it has some inbound traffic. The 9 cars I mentioned are the only ones that we own. When we interchange them we get per diem on them, but I am willing to have the same per diem rules applied to my equipment that apply to the other man's equipment (Tr. 2929). We have the demurrage tariff on file which applies to our mines, under which those mines are given 2 days' free time for loading and 2 days' additional free time for billing, after which we collect demurrage. That tariff applies even though the cars are held on mine sidings, and that is what the mining company is kicking at. We are hitting them both ways (Tr. 2930). Our tariff is not the same as the national demurrage tariff, but carries practically the same rules except on this coal equipment. If a car was held by our mines for billing, after 4 days we would charge the mine $1 a day for the car. Whether or not the regular demurrage charge of $2 would apply would depend upon whether or not the car was removed upon the request of the shipper or for the convenience of the carrier. The custom in our territory is for the carriers, when they have a surplus of equipment, to disregard car distribution rules and store the coal on their own tracks for their own [fol. 534] convenience without assessing demurrage (Tr. 2931). That is not a violation of the demurrage rules. The convenience of the carrier would be served by storing cars elsewhere than on a mine siding because the road gets more entrance into the mine, more coal loaded, and more revenue. If 20 cars are placed and were all loaded and 30% were then billed out, they would get 16 cars with no cars carried over as no bills. It is my understanding that where no bill coal is not held on mine sidings, but is held somewhere else for carriers' convenience, the carriers are not required to collect demurrage. I understand that they actually do this (Tr. 2932). I am making no specific charges with respect to that practice. Where a car is held under regular demurrage, the charge is $2 for the first 2 days and then $5; whereas, our tariff provides for $1 a day no matter how long held. The practice of the Missouri Pacific, when there is a car sur-

plus, to turn the cars into the mines on its railroad, is permitted by the car distribution rules and there is nothing improper in it. My railroad could get exactly the same service in the matter of car supply. Our disadvantage is that we have to pay per diem to the owner while the mine is holding the car (Tr. 2933). We have modified that situation by putting in the $1 demurrage charge. At any rate we have overcome it to the extent that we collect $1 a day on cars held beyond 4 days. If Paragraph B of Rule 6 was modified, amended or abolished so that I could work it out with the Missouri Pacific, then when there is a surplus of equipment, and the Missouri Pacific is deviating from car distribution rules (Tr. 2934) by letting the mines load all the coal they want to regardless of billing. The car distribution rules require that if a mine is rated at 10 cars a day the railroad charges the mine with 10 empties and they are carried as empties until they are billed out. If 10 cars are loaded and 4 are billed out, the railroad would bring in 4 loads and replace them with 4 empties. That is the practice during most of the year. When there is a surplus of cars, the roads fur-[fol. 535] nish empties and let the mine run up to the capacity of its mine tracks. If they have room for 25 loads, they would furnish empties until they were blocked (Tr. 2935). I could have that same car supply at our mines if I paid the per diem. Our mines are, therefore, in the same situation as those on the Missouri Pacific, except that they have to pay $1 a day demurrage to me, whereas, those on the Missouri Pacific haven't that expense. If my proposed arrangement was put in effect, I could pass the saving on to the shipper by cancelling our $1 demurrage charge against the coal mine. I am now able to do that physically but not financially (Tr. 2936). I am not trying to have the Missouri Pacific pay the bill, as at that time of the year it will have 70,000 empties stored and are looking for somebody to use them. They have asked me repeatedly to take 25 or 30 cars to get them out of the way. It would make no difference if those cars are on my road loaded and are detained from 4 to 7 days, or are standing empty on the Missouri Pacific. My plan would relieve the shipper of paying the $1 a day, which makes me whole, and technically that loss would fall upon the Missouri Pacific instead of my road. Actually, there would be no loss because it contemplates a period of time when there is surplus of equipment and there are no

other loadings (Tr. 2937). I confine my application to times when there is a surplus of equipment and am willing to pay per diem when there is no surplus. That will enable me to put my shippers on a parity with shippers of main lines. My plan is not inconsistent with my statement that the car owner was entitled to compensation. If the Missouri Pacific is a car owner, has a surplus of equipment and is willing to give me cars and waive the rental, I think that is consistent and that it is not costing them money. My proposition would permit the Missouri Pacific to make any sort of deal that it wanted to (Tr. 2938). I would make it apply to all other short lines with which the Missouri Pacific connects, but if the same deal was not made with all, I don't think there [fol. 536] would be any more discrimination than there is now with respect to our coal shippers. I credit the officials of the Missouri Pacific with exercising ordinary business judgment. I think we lost a little money last year. During the 1925 period covered by the questionnaire we had a deficit of $14,279.20. 1925, 1922, 1921 and one other year are not representative (Tr. 2939). The last 5 years have not been representative and all our business has been a little upset. We have operated for 43 years, and under ordinary conditions have always been selfsustaining. 99% of our freight traffic is interline and trucks will take care of the local business. We are willing to pay per diem on cars used in local service. Under my proposal there would be no demurrage on open cars. I have tried to get away from that because the coal people are on my neck all the time (Tr. 2940). The $56 demurrage we collected in 1925 practically all accrued on coal. That is the $1 demurrage charge which I propose to cancel. All our coal moves on divisions of through rates. Some years ago we contemplated purchasing additional open top cars. The Missouri Pacific officials suggested that we do not do it since the cars moved long distances and they preferred to use their own cars rather than pay per diem on mine. During times of car surplus their cars would be idle (Tr. 2941). If we had gone ahead and bought cars, I could have compelled their use on my traffic, but I allowed myself to be controlled by the Missouri Pacific. During Federal control we paid straight per diem, but I am almost sure that we had 2 days' allowance for some period. I would have to check that up. I think we paid straight per diem but had that lower rate during the federal administration (Tr. 2942).

We did not sign the waiver agreement. We rate the mines on our line but use the same basis that the Missouri Pacific [fol. 537] uses. In some years 90% of our traffic is coal, but we have no coke. In 1925 we had 418 cars of coal outbound and 38 cars of coal inbound. All of the traffic which we originate moves over the Missouri Pacific (Tr. 2943) which is our only connection. About 75% of this coal tonnage moves to at least Kansas City. There are roads that connect onto our line and solicit the routing of the business. The coal to Kansas City can be routed over to the lines into Kansas City by the shipper, but the only exception to Missouri Pacific routing is that that road carries rates in connection with the Frisco at Claremore. The Missouri Pacific gets the coal traffic without any solicitation or expense (Tr. 2944), although it does work Dardanelle for commercial tonnage. Our coal shippers under our demurrage tariff get actual time for loading up to 48 hours for billing. They do not get 4 days free in all instances. Our coal shippers did not ask that our demurrage tariff be suspended. I discussed the matter with them and, while they said they did not like it, they would try it for a while and see how it worked, reserving the right to go to the Commission (Tr. 2945). Our complaint is against Paragraph B of Rule 6, which limits any subscriber from deviating from the rules. That would not affect us now being a subscriber, but would cause me to become a nonsubscriber.

T. P. GIACOMINI was called as a witness and, being duly sworn, testified as follows:

I am Manager of the Montana Railroad, which has a main line 2.76 miles long (Tr. 2946). We have no side tracks. The mines we serve have their own tracks which we use but do not own. The line was put into operation in May, 1921, and we report to the Interstate Commerce Commission as a common carrier. Our car hire was arranged in a contract with the Missouri Pacific under which we pay $1 a day per [fol. 538] diem, counting from midnight. The mines were placed under the demurrage rules. We are not able to run the risk of unlimited free time while mines are holding no-bill loads, so we published our own demurrage tariff, allowing the mines 48 hours' free time and charging them the

standard demurrage rates of $2 per day for the first 4 days after the free time and $5 a day thereafter. We were only trying to protect ourselves in the matter of higher costs, and the demurrage rates put us in the position of making a profit on Missouri Pacific cars at the expense of the Missouri Pacific, which we did not feel was fair to the mines (Tr. 2947), so we changed our tariff by continuing the 48 hours' free time, but charging thereafter a rate of $1 per day, enough to make us whole on the per diem after the first 2 days. The mines complained bitterly about paying demurrage when competitive mines on the Missouri Pacific did not pay. I talked the matter over with the Missouri Pacific and their officials agreed to relieve us from our contract obligation to pay the $1 a day and furnish us cars free of per diem, which enabled us to cancel our demurrage tariff and put our mines under the standard demurrage code, to which we are now a party. Last May, an official of the Missouri Pacific called me on the telephone and said that the Commission was after the American Railway Association about special arrangements, and that while he did not like to do it, he was compelled to cancel our arrangement so that they could report a clean slate (Tr. 2948). I objected to it, but they said they were compelled to do it under the Association rules, and that perhaps it would be only temporary and would straighten itself out later. They have rendered bills against us for straight per diem amounting to $5,222, retroactive to March 1, 1927. We have not paid the bills and hope to get relief in some way. I doubt whether the demurrage tariff [fol. 539] against shippers could be put into effect, as our mines are in close competition with those on the Missouri Pacific, a few miles away. If they paid demurrage they would be subjected to that much extra cost and might have to go out of business. I have an exhibit showing our operating costs for the first seven months of 1927, showing a net deficit of $6,985.03 (Tr. 2949),

(Said document received in evidence as Exhibit No. 262.)

The per diem bills, including July 31st and some retroactive bills would increase this deficit to $12,207.03 which would cause the bankruptcy of the road. We serve 6 mines, one of which, the Clarksville Coal Company, owns all the capital stock of the railroad. Most of our traffic is shipped by other mines. Three of them ship more coal than the

Clarksville Company. In 1925, the Clarksville Company shipped 206 cars out of a total of 2010, and in 1926, 196 cars out of a total of 2258 (Tr. 2950). Our view is that the rule under investigation should be modified so as to allow the carriers to deal with each other at their discretion.

Cross-examination:

My Exhibit 262 involves the first 7 months of 1927. All our track is 2.76 miles long. Two of our mines are directly on our main line. One of them is 2.76 miles from the Missouri Pacific connection and the other about 2.5 miles (Tr. 2951). The rails serving 3 of the mines join our northern terminus which is 2.76 miles from the Missouri Pacific. The mine extension goes on about three-quarters of a mile. We get divisions of through rates on coal ranging from 18¢ to 34¢ a ton, depending on the destination and size of the coal (Tr. 2952). Practically all of our traffic is outbound coal. The road was built by the Johnson & King Coal Company, which operated the property of the Clarksville Company mines for the purpose of getting the coal to the Missouri Pacific. Three other mining properties were in existence [fol. 540] at the time, so that it was really built to serve 4 mines. Before that the Johnson & King Coal Company (Tr. 2953) hauled the coal to the Missouri Pacific on their mine tracks. One other property was hauling wagon coal. We are now under straight per diem of $1 a day but are not paying it. We have made reports to the Interstate Commerce Commission since 1921. Our divisions have been in effect since 1921, but have been modified occasionally. They were changed in January of this year following the change in the per diem rules. When that road cut out the per diem charge (Tr. 2954) they cut down the divisions a little. They have consistently refused to increase those divisions. The road was originally constructed in 1918, but during the war was not operated. It is all in Johnson County, Arkansas, and extends from the Missouri Pacific connection at Montana, Arkansas, to North Spadra, Arkansas. The mines do not do their own switching. We take the cars to the mines and pull out the loads (Tr. 2955). The coal is all Arkansas Anthracite. The 18¢ division covers slack to Oklahoma points, over a comparatively short haul. The through rate is very thin. The 34¢ rate applies to two line hauls to Missouri Pacific points, such as Kansas, Omaha,

and Kansas and Nebraska points. That would be 500 to 700 miles. There are some intermediate rates, one of 32¢ on traffic to the Twin Cities, which would be a 3 or 4 line haul (Tr. 2956). The official of the Missouri Pacific who called me up, I think was W. L. Hayes of the Missouri Pacific. He said the Commission was after him but he was evidently misinformed and probably meant the American Railway Association. The information conveyed to me was that it was the I. C. C. (Tr. 2957). I have nothing written on that as he did not confirm it by letter. The cut in our divisions was made effective January 1, 1927 because they had just eliminated our straight per diem. When we were told that we need not pay per diem the divisions were cut an average [fol. 541] of 2¢ per ton, except that the 18¢ division was allowed to stand (Tr. 2958). The slack coal is between 30 and 40% of the traffic. There was no change in the divisions when the per diem rate was restored. The Traffic Department said that per diem was a matter for the Operating Department, and the Operating Department said that if we wanted relief the Traffic Department would have to give it. In 1926, we had net railway operating income of $172.58. That was the figure filed with the Commission and car hire was deducted. That is also true in Exhibit 262 but the per diem is added separately (Tr. 2959). The expenses in that exhibit are those used under the Commission's accounting rules to produce net railway operating income. Each item in the last column in Exhibit 262 represents net railway operating income with the per diem bills that I haven't yet paid, and the column headed "net P or L" means profit or loss. Our first arrangement with the Missouri Pacific not to pay per diem was in November, 1925. Our divisions at that time were sufficient to enable us to get along without the payment of car hire (Tr. 2960).

F. I. CLARK was called as a witness and, being duly sworn, testified as follows:

I represent the Jefferson & Northwestern Railway, the same Company that filed a complaint with the Commission in Docket 13757. We made a record before the Commission in that case on our complaint (Tr. 2961). The only condition on this railroad that has changed since that record

was made is that the road has been constructed from Marietta to Naples on the Cotton Belt, the extension being put in operation in January, 1926. This extension is 9 miles long. We favor the modification of the per diem rules of the American Railway Association. We are not a member of the American Railway Association. We filed with the Commission an answer to the questionnaire.

(Said document received in evidence as Exhibit No. 263.) (Tr. 2962.)

Cross-examination:

We have added 9 miles to our railroad since our case [fol. 542] was submitted and are now operating under the straight per diem rules of the American Railway Association. Twelve of our freight cars are adapted for interchange but we do not interchange them. The answer to Question 9 on Exhibit 263 must mean interline traffic, as we have no intermediate service. We also have some local traffic (Tr. 2963). The 4060 cars of local traffic we handled in 1925 was largely logs handled in our own equipment. We do switching at Jefferson for the Texas & Pacific and they pay us monthly for doing the work. The work is done under a contract and they pay us so much a month. The charge is not on a per car basis. It is an operating arrangement and the cars are not interchanged to our railroad (Tr. 2964). The amount received is included in Answer 10 on Exhibit 263, together with the amount that we received from the L. R. & N. and T. & P. on a car basis also. I don't know what proportion of the revenue accrues under the operating agreement and what part under the tariff. The switching at Jefferson to and from the mill is not handled under the contract. Before our recent extension was constructed our main line mileage was 41 miles (Tr. 2965). We get a division on practically all of our interline traffic. On switching service we get a switching charge which is absorbed. On all the interline line haul traffic we get a division of rates. Our division on intrastate business varies, some being on a percentage and some per hundred pounds. On lumber intrastate we get 7.2¢ per hundredweight (Tr. 2966). On interstate business we get the tap line scale which is $4.50 from North Jefferson and runs up to 5¢ at Marietta. By having the connection

with the Cotton Belt, we get 5½¢ interstate via that road. Our haul ranges from 5 miles to 45 miles. On the last page of Exhibit 263, the rate of return shown should be in the red as we have figured the deficit on a percentage [fol. 543] basis (Tr. 2967). That is true except in 1924. I am Vice President and General Manager of the Jefferson & Northwestern. We now have three railroad connections, but at the former hearing we had only two. Our average length of haul on interline traffic is 12 or 15 miles. We do not handle many private cars on a mileage basis. We do not count the cars handled under the operating agreement with the Texas & Pacific as being on our line (Tr. 2968). 75% of our traffic is line haul traffic. On switching we get $1.80 a car for moving a car a mile, and to an oil mill that we have we get $6 a car. We pay straight per diem on these cars. The $6 cars are moved half a mile. We asked for it and got it. I am quite sure that the $1.80 is a switching charge, as it is the Railroad Commission of Texas switching scale fixed by them as proper for that distance (Tr. 2969). Our per diem cost on the $1.80 cars, the $6 cars, and those handled in line haul service, is from $2 to $4 a car. Question 16 on Exhibit 263 shows that in 1925 we handled 340 cars in terminal switching, receiving revenue of $3,654.80 which is more than $10 a car (Tr. 2970). That is correct because it includes the monthly payment by the T. & P. for doing their switching. That is in error but was in accordance with our accounting records for 1925. We have included our division of $4.05 under the tap line scale on shipments from the Clark Boyce Lumber Company as revenue and not as switching. I don't know whether to call it switching or a division (Tr. 2971). In the Tap Line Case we were limited to $4.05 on interstate lumber shipped from North Jefferson. I don't know whether that is a switching charge or a division of the rate. The $6 is the same thing and the $1.80, the $4.05 and the $6 are all absorbed (Tr. 2972). Our revenue on line haul traffic delivered to other railroads varies from $13 to $50 a car. On cars loaded inbound and outbound in switching service we would get $1.80 each way but there [fol. 544] is not much of that as on a car switched in and made empty we take it to some other place and load it out (Tr. 2973). Our traffic runs heaviest in the fall in the cotton season, as cotton and cottonseed are the largest

commodities we handle next to lumber. Lumber moves continuously the year around (Tr. 2974). Under the Tap Line scale our revenue depends on the distance we haul the traffic. The lowest charge is $4.05 for a haul of 1½ miles and 5½¢ for 45 miles is the highest. 7.2¢ is our intrastate charge (Tr. 2975). Most of our outbound lumber traffic from the Clark & Boyce Mills is intrastate. We haul it 1½ miles and get 7.2¢ per hundred pounds. The $4.05 charge we get was fixed by the Interstate Commerce Commission, the $1.80 was fixed by the Railroad Commission of Texas in their switching circular, and the $6 was given us by our connections because of the injustice of the $1.80. We have never made any proper application to get the $1.80 increased. We applied to the Commission for authority to charge $6 switching for one industry (Tr. 2976) which is a cottonseed oil mill. We got that permission and the charge is absorbed by the trunk lines. We haven't made any effort to get the charge increased to any other industry. The $6 charge and the $1.80 charge apply in the switching limits and the $4.05 cars are out of the switching limits. On the local traffic handled in the logging cars (Tr. 2977) we get the regular Texas intrastate tariff rate, which varies with the distance, but is $5 for the distance we are now hauling. It has been $7.50 and sometimes less. I am not able to say if that rate is compensatory.

J. T. WURTSBAUGH was called as a witness and, being duly sworn, testified as follows:

I am President of the East Texas & Gulf Railroad and also President of the Lodwick Lumber Company (Tr. 2978). [fol. 545] The Lumber Company is the real owner of the railway. We have executed an answer to the questionnaire in this case.

(Said document received in evidence as Exhibit No. 264.)

The railway connects with the Texas & New Orleans at Hyatt, Texas, and extends 3.6 miles east to a stub end at Hicksbaugh, Texas. The Lumber Company operates trackage beyond Hicksbaugh as its plant facility. Our principal traffic originates at Hicksbaugh but we sometimes pick up cars at intermediate switches (Tr. 2979). We serve no town

outside of Hicksbaugh. About 95% of our entire tonnage is contributed by the Lumber Company. I have prepared an income and operating statement for 1926.

(Said document received in evidence as Exhibit No. 265.)

Exhibit 12 correctly shows our basis of car hire settlement. We do not subscribe to the per diem agreement and make settlement with the Southern Pacific on the per diem basis without free time. We have done that for 9 years, except during Federal control when we were allowed 2 days' free time (Tr. 2980). Prior to that our car hire arrangement was "not in operation." In 1926 we handled 824 cars outbound and 100 cars inbound. All the outbound tonnage was forest products. The inbound tonnage was hay, grain, fuel, oil and miscellaneous products. We paid to the Southern Pacific in that year $2770 per diem on freight equipment which was 14.52% of our gross freight revenue of $19,074.51. Our line is a Tap Line, although it was not in existence when the original Tap Line decision was made (Tr. 2981). The line is controlled by the Lumber Company which furnishes approximately 95% of its tonnage. I understand the Tap Line divisions have been rigidly prescribed by the Commission, and that our divisions on interstate business are identical with Tap Line divisions. We get 2½¢ per hundred pounds on outbound lumber inter- [fol. 546] state or about $15 a car. We get the same division on inbound interstate carload tonnage. In June and July of 1923, we protested our per diem arrangement to the Southern Pacific, but it said that they were parties to the Agreement to abide by the decision of the American Railway Association on the $1 a day basis and did not intend to deviate from it in any way (Tr. 2982). We are not satisfied with the application of straight per diem to us, as it is unfair to a short line with limited mileage which operates as a terminal feeder line. The time element on our railroad is much more important than mileage. I have prepared statements showing for the inbound and outbound carloads in February, 1927, the relation of per diem paid to revenue received.

(Said document covering inbound carloads received in evidence as Exhibit No. 266; said document covering out-

bound carloads received in evidence as Exhibit No. 267; and the summary sheet received in evidence as Exhibit No. 268.)

Exhibit 268 shows that on the two inbound cars handled we received 6.6% of the total earnings and paid 15% of the total per diem. On the same cars our per diem was 17.69% of our revenue and on foreign lines the per diem was 7.05% of the revenue (Tr. 2983). I was thinking the per diem rules are unfair to us because other tap lines have more favorable car hire arrangements and are enabled to market their lumber at a lower cost than we can. The transportation cost of our lumber company is higher than the transportation cost of lumber companies which control short lines with a more favorable car hire arrangement. We think that 3 days' free time with per diem thereafter would be fair to us, as our average detention is slightly over 3 days. I have prepared a statement showing what our car hire cost would be on a number of bases. If we had 3 days' free time our car hire cost would be nil.

(Said document received in evidence as Exhibit No. 269).

I have also prepared an exhibit showing the relation of [fol. 547] system cars and other foreign cars used by us (Tr. 2984).

(Said document received in evidence as Exhibit No. 270.)

In February, out of 39 carloads handled, 33 were Southern Pacific system cars and 6 were cars of other railroads. The exhibit shows that most of the per diem paid the Southern Pacific would not be a total loss to that company if we were on a more favorable basis, since they do not have to pay the money to foreign owners. It is largely constructive per diem set up on the books. The Southern Pacific store a number of cars in our vicinity and many of the cars we receive would be idle if we did not use them. On cars of private ownership we pay the owners direct on the basis of 1½¢ a mile on tank cars and 2¢ per mile on refrigerator cars. I have prepared a statement of the cars handled on a mileage basis in February, 1927 (Tr. 2985).

(Said document received in evidence as Exhibit No. 271.)

I have thought that we could make terms with the Southern Pacific, as I understand they are making free time concessions to other small railroads. If they are

doing it with others, I see no reason why they should not do it with us.

Cross-examination:

All or 95% of the inbound cars were handled for the owning industry (Tr. 2986). There is practically no business on our line except that of the lumber company, and the railroad would not be continued if the lumber company was not there. On our interline traffic we get divisions of through rates amounting to 2½¢ on carload shipments. That is the Tap Line rate on interstate business. The division sheet may show that on lumber from our railroad to points on the Southern Pacific we get amounts varying from 3.5¢ per hundred pounds to 6.5¢ per hundred pounds, but the actual settlement is limited (Tr. 2987). We do get more than 2½¢ on intrastate Texas business, on which the divisions vary. About 60% of our outbound lumber goes to Texas. A certain percent which we call Texas business [fol. 548] is for export and we get 2½¢. From 3 to 5% of our traffic would be for export, and on the balance of our Texas traffic we get other proportions ranging from 2¢ to 6½¢ per hundred pounds (Tr. 2988). The questionnaire shows that on intrastate business we get from 1.8 to 6½¢. The 1.8¢ is for short hauls. To Beaumont we have a 9¢ rate, out of which we get perhaps 2¢ or about 20% of the revenue. That is the basis for Southern Pacific delivery, as where the division is between us and the Southern Pacific we get more as a rule. It is difficult to tell what the volume of the divisions mean unless related to service. On traffic to Beaumont we get one-half a cent over our junction point rate (Tr. 2989), because there is a difference between Hicksbaugh and the junction point of 1½¢. We pull into the junction and the Southern Pacific only loses one-half a cent on the Beaumont business because their rate is 7½¢ which they shrink to 7¢. The rate from Hicksbaugh is 9, and we get 2¢ to Beaumont. The 1.8¢ may be to Beaumont, but I am not familiar enough to say. It costs the Southern Pacific half a cent on Beaumont business via our line. All our traffic is line haul traffic as distinguished from switching, and we have recommended a basis of car hire which would almost let us out for nothing (Tr. 2990). We would expect to continue to retain

demurrage charges collected from shippers if we had 3 days' free time on foreign line equipment. I haven't figured whether or not we would have made a profit on foreign line equipment on that basis in 1925 (Tr. 2991). I don't think we ought to make any profit on foreign cars, but you can hardly tell what we are going to earn. I am willing to break even on the cars, by which I mean getting the use of them for originating the business for nothing. The railroad was built in 1917 (Tr. 2992). The Commission has not yet valued it. I do not know why the road made a profit in 1923 and 1925 and had a deficit in the [fol. 549] other years, nor do I know why our percentage of car hire to gross freight revenue was 15% in 1924 as compared to 37% in 1923 when we made a large profit. I do not know why we are going to show an operating deficit in 1926 after having a profit in 1925. I cannot tell you how the per diem on foreign lines on the inbound cars, shown in Exhibits 266, 267 and 268, was computed (Tr. 2993). That information was given me by the auditor.

(Agreed that the detention figures on foreign lines were made up in the same way that they were in similar exhibits that had been offered; that the date of the waybill had been taken, the date the cars were interchanged to the short line, and to the number of days intervening between those 2 days had been added.)

I do not think it is proper to criticize us for trying to get something for nothing out of the Southern Pacific. I don't think we could do that even if we had authority. We expect to take their equipment, load it full of freight and give it back to them. Our line does not connect with any railroad except the Southern Pacific (Tr. 2994). They give us an empty and we give them back a loaded car. I don't know if the Southern Pacific would be willing to give us our equipment for that purpose. My idea would be that it can be done. I don't know so. I think most lines would be willing if we had two lines (Tr. 2995). My idea is that another resolution should be passed by the Southern Pacific that they should use their judgment and discretion in dealing with us on car hire. We are not begging or trying to put anything over on the Southern Pacific. During Federal control, I think we had 2 days' free time. Of the 924 loads interchanged in 1926, about 2% were in

private line cars on which mileage was paid. We paid some mileage in that year in addition to the $2,770 per diem. We are asking now for 3 days' free time (Tr. 2996). It takes us about 8 days to move a car to and from the loading and unloading point.

[fol. 550] W. B. FARIS was called as a witness and, being duly sworn, testified as follows:

I am Auditor and Traffic Manager of the Shreveport, Houston & Gulf Railroad. I have executed the questionnaire in this case.

(Said document received in evidence as Exhibit No. 272.) (Tr. 2997.)

The railroad is a Tap Line extending south from Huntington, Texas, to Manning, Texas, a distance of 10.8 miles. At Huntington it connects with the St. Louis Southwestern and the Texas & New Orleans. The Company was incorporated in June, 1906. In 1926, we handled 2249 carloads, of which 134 were inbound and 2115 were outbound. We also handled 60,326 pounds of l. c. l. freight outbound, and 787,068 pounds inbound. This traffic consisted of all sorts of commodities (Tr. 2998). Exhibit 12 correctly shows our present basis of car hire. We are on a demurrage basis with both our connections and have been since April, 1920. So far as I know it is satisfactory to everybody and we ask that it be not disturbed and that the Commission require the cancellation of Paragraph B of Rule 6 of the Per Diem Rules. Our special basis is in effect with the Southern Pacific and Cotton Belt and has been since April, 1920. It is straight demurrage with 2 days' free time (Tr. 2999). I don't know why we are on a special basis and other lines are not. When our line began operation in 1906, no car hire was charged on system cars of our direct connections and 25¢ per day was paid on other foreign cars. In March, 1907, we were given 3 days' free time on empty cars received and returned loaded and 6 days' free time on cars loaded in both directions, legal holidays, Sundays and rain excepted. So far as I know, this arrangement was satisfactory and remained in effect until Federal control. During Federal control we paid per diem at 60¢ per day with

2 days' free time. On April 1, 1920, we negotiated a demurrage basis which was put in effect on that date (Tr. [fol. 551] 3000). It is still in effect and satisfactory so far as I know. In 1926 we had an average of 3.8 days detention per car on 2249 carloads. We paid $872 in car hire and collected $433 in demurrage, so that our car hire bill was $394. Under straight per diem with average detention of 3.8 days per car, we would have paid $9,543, and after deducting demurrage our car rental bill would have been $9,110, or an increase of $8,716, which would have been 23.2% of our gross revenue of $37,577.57. Of the cars we received in 1926, 2,094 were system cars of our direct connections and 155 belonged to other carriers (Tr. 3001). It would have been difficult to offset our increased per diem costs by divisional increases, since our road is a party to the Tap Line case and our divisions are restricted by the Commission. 90% of our tonnage is forest products. We perform very little local service. It is all l. c. l. and handled in our own cars. Since the rules are disregarded in our favor, I think that our connections should be given discretion to deal with all other short carriers and that our road is not entitled to any special consideration that any other road is not entitled to (Tr. 3002). I don't know of my own knowledge what conditions are on other railroads. I cannot see why our connections distinguish between our case and others. 90% of our stockholders are stockholders in the Carter-Kelly Lumber Company, at Manning, Texas. I have prepared a comparison of earnings and per diem on our line and foreign lines (Tr. 3003). The first statement covers 8 inbound cars on December, 1926.

(Said document received in evidence as Exhibit 273).

The next statement covers 27 outbound cars in the same month.

(Said document received in evidence as Exhibit No. 274) (Tr. 3004).

The next statement is a summary of the two preceding statements.

[fol. 552] (Said document received in evidence as Exhibit No. 275.)

I have also prepared a statement of our car hire on various bases covering the year 1926.

(Said document received in evidence as Exhibit No. 276.) (Tr. 3005.)

Cross-examination:

About 90% of our traffic in 1926 was traffic of the owning lumber company. Our demurrage basis of car hire now in effect is straight demurrage and is not an average agreement. To get my car hire bill of $9,543, I multiplied 2,249 cars by 3.8 (Tr. 3006). If there is any error in the total, I stated, it is in the multiplication. There is possibly an error in getting the average detention (Tr. 3007). Practically all of our traffic is line haul upon which we get a division of the rates. The answer to Question 9 on Exhibit 272 refers to interline service rather than intermediate service, as we have no intermediate service (Tr. 3008). Practically all our revenue is derived from freight operation. We have scarcely any passenger traffic. Our 1923 figures are not shown on Exhibit 272 but we came out about the same as in 1922 and 1924 (Tr. 3009). In 1924 we spent a good deal rebuilding our bridges which cut down our net, and in 1925 we killed a man which cost us $8,000. We first charged the cost of replacing our bridges to operating expense, but the Commission made us retire the old bridges under a charge to operating expenses and set up the new bridges as additions and betterments (Tr. 3010). In Exhibit 273 I have made some errors.

Mr. Duff: We will withdraw Exhibits 273, 274 and 275 (Tr. 3011).

The Witness: Our road subscribes to the National Car Demurrage Rules. I am only familiar with the Per Diem Rules in a general way. I did not suppose that our car hire arrangement was in violation of any rule. Our railroad has [fol. 553] been classified as a Class III carrier (Tr. 3012). Our division on interstate lumber traffic is 3½¢ per hundred pounds (Tr. 3013).

J. W. McCULLOUGH, having been previously called as a witness, was recalled and testified:

I testified that there is a special arrangement with respect to the time of interchange between the T. & N. O. on Southern Pacific Lines and the Moscow, Camden & San Augustine Railroad. I find there was no signed agreement but that under the practice no cars are interchanged after the departure of our train, and usually the interchange is made at 11 o'clock, A. M. (Tr. 3021). The divisions of the road were fixed in 1912 or 1913, before the War. I am sure that we have made no application to have these divisions increased. I don't know exactly what our increase and operating expense has been, but it is very substantial. It is probably about 160. I am just estimating that (Tr. 3022).

SHIRLEY SEWARD, having been previously called as a witness, was recalled and testified:

I am Midwest representative of the American Short Line Railroad Association, and I made an examination with respect to the per diem of the New Mexico Midland Railway. I have a letter addressed to the Secretary of the Commission by the President of that road, authorizing me to represent it (Tr. 3023). I have a map of the railroad.

(Said document received in evidence as Exhibit No. 277.)

It connects with the Santa Fe at San Antonio, New Mexico, and runs east 10 miles to Carthage, New Mexico, where it serves the Kinney coal mine. The maximum grade is 3%. There are many curves and 14 bridges. Exhibit 12 does not quite correctly state the per diem arrangements of this railroad (Tr. 3024). It is allowed 2 days' free time and thereafter pays the Santa Fe a per diem rate on all foreign [fol. 554] freight cars. The basis has been in effect for approximately 21 years, and the Santa Fe has never attempted to cancel it. I have prepared a statement of the carloads handled by the road in 1926.

(Said document received in evidence as Exhibit No. 278.)

The exhibit shows that of 1,570 interline carloads, 1508 were coal originating on the line, and that 1539 were outbound (Tr. 3025). There is no connection or control by ownership as between the railway and any of its freight

patrons. I have prepared a statement showing relative per diem costs, covering 1570 cars interchanged in 1926.

(Said document received in evidence as Exhibit No. 279.)

On the present basis we paid $515 per diem on those cars. They were on our line 2884 days which on straight per diem would have cost $2,884 or $2,369 in excess of their actual cost, or an increase of 5.07% of the gross revenue from carload freight during the same period (Tr. 3026). Of the cars interchanged, 1568 were Santa Fe cars and 2 were foreign cars. I have a statement of the road's operations in 1926.

(Said document received in evidence as Exhibit No. 280.)

In that year it had an operating loss of $1,690.21. On straight per diem the loss would have been increased to $4,059.21. The road operates under the demurrage rules of the Pacific Car Demurrage Bureau, and under these rules no demurrage accrues on cars held at coal mines for loading. The road uses no foreign cars to move local tonnage (Tr. 3027). It has fitted one of its own cars for this traffic. This road has no complaint to make in these proceedings, but does not feel that Rule 6B of the Per Diem Agreement approves the arrangement which it now has, and understands that the American Railway Association is attacking these arrangements and asking the Commission to cancel them. We urge, therefore, the cancellation of Rule 6-B of the Per Diem Agreement, so that it may not menace our local car hire arrangement which is justified by local condi-
[fol. 555] tions. So long as the Santa Fe and our line are both satisfied, we do not understand why the A. R. A. should dictate a method of settlement, particularly since over 99% of the interchanged cars are Santa Fe cars. The road is wholly located in the State of New Mexico (Tr. 3028). It runs from San Antonio to Carthage, a distance of about 10 miles. It has just the one track. I am not familiar with its divisional situation.

Cross-examination:

The railroad is indirectly controlled by the Carthage Fuel Company which has not operated for several years and probably will never operate as the coal is gone (Tr. 3029);

It now serves the B. H. Kinney Company, which is on a spur of the railroad and ships all the coal. I don't know where the coal goes. I don't think the mine ships engine coal; it is commercial coal. The road has not over 4 or 5 cars. It makes reports to the Commission as a Class III carrier. None of its equipment leaves its line (Tr. 3030). The Carthage Company ceased operating in July or August of 1925. I have no figures for any year except 1926. The revenue shown on Exhibit 280 for 1926 accrued almost entirely on interline traffic. The local traffic is insignificant. The approximate revenue on the coal hauled is a little more than $30 per car. The average haul on that traffic is 10 miles (Tr. 3031). I would be glad to discuss the car hire of this road, but I do not have all the figures. I think the matter is covered in the last part of my statement to the effect that the road has no complaint and is thoroughly satisfied.

E. P. Gaines was called as a witness and, being duly sworn, testified as follows:

I am Vice President and General Manager of the Marshall, Elysian Fields & Southeastern Railway. The road connects with the Texas & Pacific at Marshall, Texas, and runs 17.5 miles southeast to Elysian Fields, Texas. We [fol. 556] serve 5 stations besides Marshall and handle a veriety of products to and from these stations (Tr. 3033). 75% of the stock of the railroad is owned by 4 men who are shippers and receivers of freight at Elysian Fields. The capital stock is $30,000, in 300 shares of $100 each. Our gross revenue in 1926 was $13,901.85, of which $1,093.75 accrued from carrying the mails, the balance resulting from freight operation. Our carload business is handled in foreign cars and our l. c. l. business is handled in our own cars. We have some local traffic but it all moves in our own equipment (Tr. 3034). The road does not subscribe to the Per Diem Rules Agreement and makes settlement with the T. & P. direct on foreign cars at the rate of $1 per day without free time. We have never sought a modification of this basis. We did not start handling interchange traffic until August, 1925, and at that time the T. & P. refused to interchange cars on any other basis than straight per diem with-

out free time. The road is not a party to the National Demurrage Agreement, but has an agreement with the shippers under which they guarantee to unload cars within 6 hours or within such time as not to cause unreasonable car hire. In 1926 we paid $659 in car hire to the T. & P. (Tr. 3035) but collected no demurrage. In 1926, we handled 204 cars in strictly interchange service, but the T. & P. handled about 10 cars in switching service at $3.15 a car. The switching traffic was handled in our own cars and we received no per diem on them from the T. & P. Our average detention per car in interline service is a little over 3 days. We are asking for an allowance of 3 days free time with per diem thereafter. This will permit us to extend the regular Demurrage Agreement to our shippers, and we are willing to pay any demurrage we collect to the T. & P. in addition to any per diem that may accrue (Tr. 3036).

Cross-examination:

We do not now have any demurrage tariff at all. Up to now, we have had no occasion to use one. I am able to say [fol. 557] that *that* we would not have collected demurrage on any traffic. If we had 3 days' free time demurrage would probably accrue because cars would be delayed by the shippers longer (Tr. 3037). Giving us 3 days' free time would not necessarily slow up the movement of equipment. If we had that free time, it would take care of the demurrage allowance, free time and spotting it, the same as allowed industries. It would not necessarily result in the delay of cars for longer time than they are now delayed. The sons of Mr. Furrh own 75% of the capital stock but the shipping is done by J. M. Furrh himself (Tr. 3038). About 90% of the Elysian Fields tonnage is his and the Elysian Fields tonnage is 85% of the total. The road receives divisions of through rates on the interline traffic. That has been true on state business since we began operation. We perform no terminal switching for the Texas & Pacific but it performs some for us (Tr. 3039) at Marshall. It consists of cars coming into Marshall destined to industries on the Texas & Pacific and we pay that road $3.15 a car. We absorb part of that charge and part is not absorbed. Giving us 3 days' free time would materially reduce our car hire. On the basis of the 1926 figures it would eliminate practically all

of it (Tr. 3040). I don't know what percentage of our total traffic in 1926 was reached by our interchange cars. I don't know how our operations came out in 1926, but our railroad is not making money. I know we came out behind in 1926. Our net railway operating income will not show the true status of the company (Tr. 3041). In that year our profit and loss account was one of our largest losses on account of retirements (Tr. 3042). Our road has not been valued by the Interstate Commerce Commission. Our total carload tonnage in 1926 was 204 cars, although there were about 10 cars handled in switching service only. That would leave [fol. 558] approximately 194 cars in interline service (Tr. 3043). Our total traffic in 1926 was 204 carloads. We had no local traffic. J. M. Furrh is a merchant at Elysian Fields. Our average haul in 1926 on all traffic was a little less than 17 miles. Most of it moves the whole length of the road (Tr. 3044). We had correspondence with the Texas & Pacific with respect to the per diem to be paid on our cars handled by them in switching service but they said they did not allow it. They held the cars from 4 to 12 days. They were handled in terminal switching service on a switching charge.

CARL J. TURPIN was called as a witness and, being duly sworn, testified as follows (Tr. 3045):

I am Vice President and General Manager of the Beaver, Meade & Englewood Railroad. I have executed an answer to the questionnaire.

(Said document received in evidence as Exhibit No. 281.)

The road operates from Beaver, Oklahoma, 7 miles north to Forgan, thence 40 miles to Hooker to a connection with the Rock Island Railroad. Beaver is a stub-end. At Forgan we connect with the M-K-T. Our business consists of grain, livestock, forest products, machinery, automobiles, gasoline and coal (Tr. 3046). We handle about 2,000 cars a year, 75% of which is outbound grain and livestock destined to Kansas City and Gulf points. We pay the M-K-T straight per diem without free time and are not a subscriber to the Per Diem Rules Agreement. We have never received

any free time allowances, although we asked for some compromise whereby we could get some concessions. Out of 31½¢ wheat rate to Kansas City we receive 8¢ which requires the M-K-T to shrink their local revenue of 26½¢ to the extent of 3¢ (Tr. 3047). Our average per diem cost is about $4 a car. On grain cars we have to furnish and pay for grain doors, car liners and burlap. We have to furnish [fol. 559] all cooperage material, the average cost of which is $9.73 per car, which added to per diem cost of $3.92 makes a total cost of $13.65. We also bear all terminal switching and delays and allow free time to shippers. Our rates on wheat are 5½ and 6¢ and on corn 5 and 5½ cents over the junction point rate, and out of the through rate we receive as our division 8¢ on wheat and 7¢ on corn. The connecting lines shrink from 1½ to 2½¢ (Tr. 3048). Our per diem and cooperage cost per car amount to about $14 and our average revenue on a 60,000 pound car is about $48. The per diem and cooperage is almost 30% of our gross revenue. 80% of our grain last year moved to Galveston, Texas, via the M-K-T on a through rate of 38¢ per hundred pounds. Our earnings per car on the traffic were about $45 and our per diem and cooperage cost were nearly 30% of the total. We object to Paragraph B of Rule 6 because it does not permit local arrangements between subscribers and nonsubscribers (Tr. 3049). Our line is an originating carrier and has to bear all terminal costs, per diem, cooperage and switching. On Kansas City traffic the M-K-T shrinks its revenue about $18 per car and it costs us $14 for per diem and cooperage. If the M-K-T furnished the cars to shippers on their rails they would have to pay the cooperage, allow the free time and perform switching service, and I doubt if they could do this at $18. We perform the service and are not adequately compensated for it. The M-K-T would never have received the business except that we built the railroad. In 1925 we had gross revenue of $23,992.59. Since then we have built 20 additional miles of main line. In the same year, we paid out $3,288.32 in per diem about 13.70% of our gross revenue (Tr. 3050). The divisions to which I have referred have been in effect since June, 1926. Prior to then we received 6¢ to the Gulf and 8¢ to Kansas City. We have been operating at a deficit since 1915 except in 1926. We want 3 days' free time with payment thereafter at the established per diem rate. We

[fol. 560] operate 3 freight trains tri-weekly, which is the same service as is given on the M-K-T. Because of our divisional over the Forgan rate on grain, considerable grain is delivered at Forgan in trucks (Tr. 3051). On merchandise which we receive from the M-K-T at Forgan our arbitraries over Forgan range from 22½¢ to 5¢. The revenue on some of the merchandise cars will not much more than pay the per diem and the Katy is ahead the terminal expense, etc. We have been receiving divisions of through rates since 1919. Prior to then through rates were not in effect. The M-K-T refused to establish the rates and we took the matter to the Corporation Commission, although no decision was made (Tr. 3052). We got our through rates in 1919. Prior to then we ran 2 trains a day each way. We received cars from the M-K-T which charged us the usual per diem, and we only got from 2¢ to 10¢ per hundred out of the traffic. The property is a feeder line for the M-K-T and the only use we have for equipment is to secure traffic to turn over to it. Our local traffic does not amount to $5 a month (Tr. 3053). I wish to correct my statement as to divisions. We now receive 7¢ per hundred to Galveston and have never received any more although it has been less.

Cross-examination:

When we built our additional 20 miles of track in 1925, we got a certificate from the Interstate Commerce Commission on an application made by the Railroad Company. We represented that the track was necessary and would be a paying proposition and that we had to build it in order to exist (Tr. 3054). We had only one connection and could not get fair treatment from the M-K-T, so in order to live and keep the property we had to build to another connection. I would not want to say what we told the Commission as I haven't a copy of it here. There is something wrong and I don't know what it is. I think that $1 a day per diem is too much to charge a small line like ours, and we are [fol. 561] giving the M-K-T all the business and they are getting it practically without cost. One thing is that the cost of handling the traffic is too much as related to the amount we receive for it (Tr. 3055). That is not the whole thing. The rest of it is that when I go to the M-K-T for

one thing they refer me to somebody else. The trouble is that there is no proper relation between the M-K-T rates to points on our road and the divisions they give us on grain, and what they charge us for grain doors, cooperage and per diem. We have been buying our grain doors and cooperage from the M-K-T. I have not asked the Katy to give them to us for nothing. I tried to make some terms (Tr. 3056). I have mentioned concessions on grain doors to them and was told by them that what I wanted was divisions and to see the division men. The division men said they had nothing to do with that; to see the Operating Department. I have also talked to the President. If I could get the grain doors for nothing that would only be a temporary matter which could be cancelled in a few minutes. It would help some (Tr. 3057). My lawyer correctly stated my position when he said that what we wanted was a better division and an adjustment in regard to grain door cost and per diem, but as I understand it this Examiner isn't hearing rates or divisions (Tr. 3058).

Examiner Rice: We want this information about originating expense. I think that is very pertinent.

The Witness: It would not cost the Katy any more for grain doors and per diem than it is costing us, and it is costing us about $14 a car. That does not mean that they are losing money by giving us $18 a car, as they would have to spot the cars, put the doors in the cars and fix them up for the shippers (Tr. 3059). The Katy is shrinking its [fol. 562] local revenue 3¢ a hundred pounds on the grain that I am talking about. I figured the average per diem in at $4 a car. I suppose you could get average detention from Exhibit 281 by dividing the total number of cars, 732, into the total number of days on line, but I don't know that results in about 3 days instead of 4 (Tr. 3060). There must be an error in the exhibit somewhere, but I don't know how. Some cars come to us empty and are not fit to load grain, so we turn them back but still have to pay the per diem. In 1925 we handled 400 cars or whatever number is stated in Exhibit 281 in interline business (Tr. 3061). That was when we were only operating a little over 7 miles of road. The 2,000 cars I referred to were handled in 1926 (Tr. 3062). No portion of the stock of the railroad is owned by an industry served by the railroad. When the M-K-T

built its line into Forgan it left Beaver, the county seat, 7 miles away, without a railroad. The citizens started to build a railroad to Beaver and had just got it started when a couple of our stockholders took it over and finished it. We could not make it pay unless we built more line (Tr. 3063) and that is why we tried to build more to try to keep from going bankrupt. We have one box car, a passenger car and a caboose. We don't have any local traffic and what we do have is handled in our own cars. We published the National Demurrage Rules. We are now building our line into Hooker but have no connection with the Rock Island yet. At present, we only interchange traffic with the M-K-T (Tr. 3064). When we receive and return a car empty it is because it is unfit for grain. In 1926 we paid less than $50 in freight claims because we coopered the cars. We should not have to pay per diem on an empty car which is not fit for loading and is turned back, but we do it because the joint agent is a Katy man. I think the Katy might refund [fol. 563] the per diem if we contested the matter, but it is only $1 and we let it go. If we had a car inspector there we would turn the car down in the first place, but the conductor brings it in and we have to send it back. The through rate on grain to Galveston is 38¢ (Tr. 3065) of which we get 7¢. The time consumed in coopering a car varies. It may take from one hour to three hours. The Katy runs a train three times a week. They get in there on Friday and we run our train on Saturday. We don't run the train the same day because they have to work it and it can't be delivered to us until the next morning. We take empties on Saturday and we lose Sunday. They run extra just like we do and during the grain movement we run a train every day. 75% to 80% of our traffic is grain and we have to cooper all those cars (Tr. 3066). We do not hold cars in advance for prospective loading. As a rule, about 10 days before a big crop, the Katy Superintendent tells us that he hasn't room to store cars and that if we will take them and store them for them they will only charge us for 12 hours before we commence to load, so we do that lots of times. That might enable us to furnish more prompt service to some shippers but when we fill our whole line we can't. We are glad to do it, however (Tr. 3068).

GEORGE D. SEARS was called as a witness and, being duly sworn, testified as follows:

I am a lawyer and am appearing for the Rio Grande Eastern Railway Company. My testimony was prepared by one of my partners who is now ill. My personal knowledge of the railroad is very sketchy (Tr. 3069). Mr. Hill is Auditor of the Railroad Company and a member of my firm. He was authorized to represent it. I have a map of the railroad showing connections, stations and mileages.

(Said document received in evidence as Exhibit No. 282.)

[fol. 564] The line connects with the Santa Fe at Hagan Junction, New Mexico, and runs 12.5 miles southeast to Hagan, New Mexico. It serves 5 points (Tr. 3070), three of which are prepaid stations. The station at Hagan Junction is joint with the Santa Fe. At the points reached by the line, we serve coal mines, general mercantile businesses, electric companies and lead and coal mines (Tr. 3071). From Hagan to Stark it is 2.9 miles, to Tonque 7.4 miles, to Coyote 8.8 miles, and to Hagan 12.5 miles. Distances from Hagan Junction to Santa Fe points and other points to and from which our tonnage moves are to Albuquerque 28 miles, Santa Fe 57.3 miles, Denver 503.7 miles, Kansas City 859.9 miles, El Paso 281.7 miles, Tucson 449.7 miles and Bisbee 527.8 miles. Under our car hire arrangements with the Santa Fe we make settlement with it for all charges. It allows us 2 days free from the first 7 A. M. after cars are placed on the interchange track, after which we pay $1 per day. This basis has been in effect since April 1, 1925 and the Santa Fe has not attempted to change it to my knowledge (Tr. 3072). Our line was incorporated in 1924 with capital stock of $100,000. 996 shares are held by H. J. L. Stark, the President. It was originally constructed by the Railroad Company to serve the Hagan Coal Mines at Hagan. After the road was built the Railway Corporation made application to the Commission for permission to acquire and operate the line and received that permission in December, 1924 under Finance Dockets 4294 and 4295 (Tr. 3073). No patrons of the railroad are financially interested in it, except that the Stark family controls the stock of the Hagan Coal Company and the Hagan

Power Company. I have prepared a statement of the tonnage of the company handled in 1926.

(Said document received in evidence as Exhibit No. 283.)

I have also prepared an income statement for the year 1926.

(Said document received in evidence as Exhibit No. 284.) [fol. 565] (Tr. 3074.)

It will be noted that we pay about $3 per diem on each car interchanged. Under straight per diem, there being 526 cars interchanged, our car hire for 1926 would have been increased by $1052. Our total estimated car hire on straight per diem would have been $2,528. The increase would represent 10.4% of our total freight revenue, amounting to $10,118.34. We have no present complaint as to the Santa Fe and are satisfied with our present basis of car hire (Tr. 3075). We feel that our arrangement, however, is menaced by Rule 6, Paragraph B, of the Per Diem Agreement of the American Railway Association, and do not think that any carrier or the Association has the right to tell the Santa Fe how it shall settle with us for car hire, since 96% of the cars interchanged are Santa Fe system cars. We want our present basis left undisturbed and Rule 6-B eliminated. I have prepared a statement of comparative car hire costs.

(Said document received in evidence as Exhibit No. 285.) (Tr. 3076.)

Cross-examination:

About 70% of the total traffic on Exhibit 283 was handled for the Hagan interests which operate a coal mine and a power plant. I judge that most of the inbound traffic went to the Hagan mines. On Exhibit 284, I do not understand the figure of $46,000 myself. I know the road lost money, but I am unable to say whether that represents its complete operating loss (Tr. 3077). We did include in our expenses matured interest unpaid, amounting to almost $20,000. I don't know the book value of the railroad and I don't think the Commission has valued it. Our present car hire basis has been in effect since April 1, 1925. I doubt if there was much operation of the road prior to then. Our

total car hire cost in 1926 was $1,577.54, of which $1.54 was mileage (Tr. 3078). From the balance of $1576 should be deducted $1339 demurrage to the extent that it accrued on interline traffic. We have no segregation of demurrage on local traffic and interline but our local traffic is small, the [fol. 566] gross revenue being approximately $300. Our net car hire cost would be the difference between $1,339 and $1,576. I think the road publishes the National Demurrage Rules, but I don't know whether it applies car distributions rules at coal mines (Tr. 3079). The road owns a few cars, but I don't know whether or not they are interchanged. I think they are only used locally (Tr. 3080).

Examiner Rice: The hearing is adjourned to October 8th at New Orleans, Louisiana.

[fol. 567] Proceedings at New Orleans, La., on October 8, 1927

The Commission has set for further hearing at this time and place docket No. 17801, Rules Governing Car Hire Settlements between railroads and the various cases that have been consolidated therewith.

SHIRLEY SEWARD, having been previously called as a witness, was recalled and testified:

"I represent the American Short Line Railroad Association and am prepared to testify as to the Mansfield Railway & Transportation Company with reference to the per diem on that raliroad (Tr. 3087). The railroad company is essentially a belt line. I have a map of the road.

(Said document received in evidence as Exhibit 286.)

The location of towns, industries, and points of interchange are shown on the map. The road extends from Mansfield about three fourths of a mile to a point where it has a connection with the Kansas City Southern. From this point one branch goes to a connection with the Texas & Pacific and the other to a stub end. The road serves lumber and oil industries and other activities (Tr. 3088). Mansfield and South Mansfield constitute one community

so that the Short Line acts as a terminal belt line. In 1879 the Texas & Pacific in building its line missed Mansfield and in 1880 the citizens constructed two miles of railroad to connect with the Texas & Pacific. Fifteen years later the Kansas City Southern also missed Mansfield by one mile. A joint track was then constructed by the Kansas City Southern and this road to give Mansfield a second outlet. Some years later the Frost Lumber industries started operations and some of their stockholders purchased an interest in the road (Tr. 3089). The controlling stock interest in the railroad is now vested in the Frost industries. [fol. 568] I have a statement of the income account of the road for the year 1926.

(Said document received in evidence as Exhibit 287.)

I also have a statement of cars interchanged with connections in 1926.

(Said document received in evidence as Exhibit 288.)

The statement shows a total of 2187 loaded and empty cars interchanged with the Texas & Pacific, and 2403 loaded and empty cars with the Kansas City Southern, or a total of 4590 cars (Tr. 3090). Less than one fifth of the tonnage consisted of forest products. Exhibit 12 does not correctly describe the car hire arrangements of this railroad. It is not treated as a plant facility as stated in that Exhibit. Both the Texas & Pacific and Kansas City Southern deliver cars to it on interchange tracks. It is on a demurrage basis of car hire with both connections, and makes monthly settlements with them on the basis of the joint interchange receipts. The connections are not interested in the collections by the Short Line from its patrons as the Short Line collects its own demurrage. In case of failure to handle traffic promptly the Short Line is penalized (Tr. 3091). This road is now satisfied with its car hire basis and only fears the application of straight per diem under paragraph B of Rule 6 of the per diem agreement. I have prepared a statement showing comparative car hire bases for 1926 as applied to this road.

(Said document received in evidence as Exhibit 289.)

The Exhibit shows that 4590 cars were interchanged and that $610 per diem was paid on the present demurrage basis. $8516 would have been paid on a straight per diem basis or an increase of $7906 (Tr. 3093). The increase being 20.2% of the gross freight revenues amounting to [fol. 569] $39,096. Traffic handled by the line for the proprietary lumber company is about one fifth of the total. I have prepared two statements showing the outbound and inbound traffic of the road in 1926.

(Said documents received in evidence as Exhibits 290 and 291.)

1367 carloads were handled outbound and 1479 inbound. Of that total only 664 or about one sixth consisted of lumber (Tr. 3093). If 50% of the road's traffic is for the proprietary industries in order to make it a tap line, this road is entitled to be removed from that classification, although it now operates under tap line restrictions. It receives a division of $4.05 per car on lumber and as its average detention is forty eight hours, the payment of $2 per diem would reduce its division to $2.05 or $2.00 less than the allowance fixed by the Commission. The road is practically a switching road, and some of the traffic is handled at a switch movement but it gets division on most of its traffic. The maximum haul is two miles and all switching and line haul rates are published in one tariff. It is only asking for the continuance of its present car hire arrangement which is straight demurrage. The road is primarily a belt line (Tr. 3094) serving patrons that the trunk line cannot serve. It is not performing a line haul in the usual sense, but is allowed divisions and switching charges out of through rates. Its divisions were made on the basis of a demurrage settlement of car hire which was also in effect when the divisions were made and must have been taken into consideration rather than a per diem basis. The divisions were made in 1911 or 1912 and no division sheet has been revised in the last two or three [fol. 570] years. The road has been on a demurrage basis of car hire all these years. If it is now put on a per diem basis of car hire, its divisions will have to be readjusted to permit its operation. It receives a switching charge of

$3.60 a car on many commodities (Tr. 3095) and $4.05 on forest products. Such divisions are not sufficient to permit it to assume a maximum of two days per diem. It prefers that no changes be made, as a change in one will require an all around adjustment. If this does come it wishes to be free to work it out with its connections without outside interference.

Cross-examination:

I would say that this railroad is operated as a part of the Huttig Mansfield and Nacogdoches Railroad system, as it is under the same general ownership (Tr. 3096). A majority of the stockholders of the railroad are stockholders of the Frost Lumber industries. About 80% of the railroad stock is owned in that way and the other 20% is owned by citizens who have no interest in the Frost Lumber Company. The railroad isn't over five miles long and its maximum haul not over two miles, although it might be 3½ miles from certain industries. It is about three quarters of a mile from the connection with the Kansas City Southern to the industries in Mansfield (Tr. 3097) and about 1¼ miles from the same connection to the Frost Lumber Company. I don't know that this railroad has been held to be a common carrier but it was a party to the tap line case. I don't know that the Commission has fixed any value on it and I don't know what the book value is. The road files all reports with the Commission that should be filed by a class 3 carrier (Tr. 3098). Our statement for 1925, similar to Exhibit 287, ought to appear in our annual reports to the commission.

[fol. 571] Mr. Towner: I would suggest that we agree to refer to the annual reports of this road for 1925 and 1926 in order to get the income account similar to Exhibit 287 and the book investment.

Examiner Rice: I would also like to determine that actual mileage the road operates.

The Witness: The total number of carloads handled by the road in 1926 should appear in Exhibits 290 and 291 (Tr. 3099). It handled no local traffic and the 2846 cars shown in the two exhibits constitute all the traffic. All of

our demurrage accrued on interline traffic and somewhat exceeded the per diem payments. The road collected demurrage from its patrons slightly in excess of the car hire it paid to its two connections. I don't think it meant to make a profit out of foreign cars but that is what happened (Tr. 3100). It can be explained as the road had no control over it. I think it has two or three freight cars in local service, but these cars don't go off its rails. I don't think that I am qualified to say that trunk lines should have the same consideration as feeder lines in a case such as this, where the traffic delivered to this road was about twice as much as the traffic originated by it (Tr. 3101). The fact that the trunk lines turned over to it twice as much traffic as they received from it would not entitle them to consideration, for the Short Line is a feeder line even if all its traffic was delivered by the trunk line, and if the Short Line was not there there would be no traffic whatever, so it is a feeder line whether the movement is inbound or outbound.

[fol. 572] In Exhibit 289 I have estimated the average detention of two days on 4590 loaded and empty cars and have computed per diem at $1.00 per day; in order to get my statement of what would be paid under the per diem basis. Two times 4590 is 9180 so that there is evidently an error (Tr. 3102). I did not prepare Exhibit 289 but the difference may be because the dentention is less than two days. I don't know what the actual average detention was although it was about two days. It is plain that it has not been estimated at two days. The explanation must be that the Exhibit does not include privately owned or mileage cars (Tr. 3103). If those cars were included in the number of 4590 they should be subtracted before per diem is computed. I know that a number of tank cars are interchanged. I cannot explain the discrepancy since a note on the Exhibit shows that the 4590 does not include mileage cars. The only explanation is that that number does include them. This road would be entitled to certain switching reclaims if it were a subscriber (Tr. 3104). It would receive such a reclaim on the business on which it receives a per car charge, but would receive no reclaim on traffic on which it receives a division of through rates. About 40% of its traffic is delivered on switching charges which

would mean a reduction of about $3500. On Exhibit 290, 664 cars of lumber came from the Frost people. About half of the 74 cars of ties would also come from them (Tr. 3105). The 57 cars of poles and perhaps some scrap iron might also come from the Frost industries. Of the inbound traffic some of the machinery would go to them, but most [fol. 573] of the inbound tonnage was for the inhabitants of Mansfield. I have no segregation of the inbound traffic as between the proprietary industries and outsiders. Our present basis of car hire has been in effect several years and is the straight demurrage agreement. After free time the road pays $2.00 a day and then $5 a day without averaging (Tr. 3106). This is the same arrangement applied against its shippers except two of the shippers who have the average agreement. About 40% of the railroad's traffic is switching and the balance moves on divisions of through rates. It gets tap line division on all lumber. I don't know what part of the lumber moves intrastate but the rate on that is probably lower than the interstate rate (Tr. 3107). I know that the intrastate rates generally in Louisiana on tap line products are lower than the interstate rates. I don't know what divisions the road gets on intrastate traffic, but it would be remarkable if it got more than on interstate traffic. I know the condition of a good many short lines in this state. The road has a number of kinds of divisions. One is on a unit basis and one is on a percentage basis. The present basis of car hire has been in effect for a good many years (Tr. 3108). I think it was in 1912 when the tap line decision was made. I can't say exactly. Our divisions with the Kansas City Southern were revised in 1922 and those with the Texas & Pacific were revised in 1918. I don't know what the revisions were but the Railroad Administration revisions must have been upward. I can't tell without an examination of the division sheets. The railroad is entirely in Louisiana (Tr. 3109). [fol. 574] The intrastate rates are very low. That may account for the lowness of the switching charges, but I don't know (Tr. 3110). I have prepared an Exhibit showing four specific cars with the per diem settlement and the demurrage settlement on each.

(Said document received in evidence as Exhibit 292.)

On the Frisco car one day must have been a Sunday. This road is willing to turn over under its present arrangement (Tr. 3111) any demurrage which it may collect in excess of the car hire paid by it, as it has no desire to profit on cars of its connections. The fact that on Exhibit 292 we got 7 days free time on one car and 5 days on another car may result from the fact that the car was given to us after seven in the morning and that we had an extra day's advantage on that account. Ten o'clock A. M. happens to be the time at which the interchange is made. It might be changed next month. So long as it continues we actually get three days free time because we get an extra day without paying for it (Tr. 3112). It works in the short line's favor on receipts and against the short line on deliveries. If a car is loaded inbound and outbound the road gets 4 days free time. It is on such cars that demurrage may be collected from patrons in excess of car hire paid. On the first car, Exhibit 292, the consignee unloaded on the first day (Tr. 3113). He did not take all of his free time on the inbound load. Our road publishes the equivalent of the National Demurrage Rules but publishes its own rules. If it detains a car loaded one way two days it pays in car hire $2 per day for the first four days and $5 a day thereafter. It pays the equivalent of demurrage charges and [fol. 575] not per diem. On Exhibit 289 if the figure eight thousand odd dollars is incorrect, the percentage in the last column would be increased (Tr. 3114). I would estimate that Mansfield has a population of five or six thousand, perhaps ten thousand. The town was there years before the Frost Lumber Companies were heard of, and for fifteen years before the Kansas City Southern was built. Of the total of in and out traffic about 20 or 22% is for the proprietary industries. The short line does not charge demurrage against its patrons on rainy days (Tr. 3115) but there is no exception in that case as between the short line and its connections. Only Sundays and holidays are eliminated. The road does not collect demurrage from its patrons when it rains. I mean by that if the rain interferes with the work. The divisions sheet of the Kansas City Southern was made effective on July 1, 1922, the same date that the 10% reduction in rate was made effective (Tr. 3116). I know that rates were increased 25% in 1918 and reduced 10% in 1922. This road is satisfied with its car

hire arrangements. I have examined its correspondence files with its two connections (Tr. 3117) and I have asked the officials of its connections and no effort has been made to change the arrangement. I got that information from the employees of our own road, and not from representatives of the trunk lines. There is nothing in the files to indicate any dissatisfaction on the part of the trunk lines (Tr. 3118). The road operates on a straight demurrage basis car hire. It is supposed to pay mileage to private car owners but the amount is so small that bills are not sent for it. It does not pay demurrage to its connections on mileage cars. The division of $4.05 on lumber was made effective July 1, 1922, by the Kansas City Southern. That [fol. 576] was the tap line scale but there have been seven modifications of it. I don't know what the original allowance was (Tr. 3119). I don't know whether or not the railroad shared in the rate increase effective in September, 1920. 40% of its traffic is switching. Whether or not it would get a reclaim on that traffic if it were a subscriber would be a matter for decision, but under the general practice it would be entitled to that reclaim (Tr. 3120). On the switching traffic the road receives a switching charge which is absorbed by its connections. This road interchanged a total of 2846 loaded cars in 1926. The figure of 8516 in column 3 on Exhibit 289 must represent the total number of per diem days spent on the road by per diem cars in 1926. It does not include mileage cars. That figure is arrived at by assuming an average detention of two days on each car (Tr. 3121). Exhibit 288 includes both mileage and per diem cars, but 8516 is evidently twice the number of per diem cars. The cars interchanged with connections in 1926 is shown as 4590. The note on Exhibit 288 saying that this does not include mileage cars must be in error. The number of per diem cars must be less than 4590 (Tr. 3122).

O. W. Wheless was called as a witness and, having been duly sworn, testified as follows:

I am an auditor of the Warren & Ouachita Valley Railway Company. It has executed the questionnaire in this case.

(Said document was received in evidence as Exhibit 293.) (Tr. 3123.)

I have prepared a map showing the line of the railroad.

(Said document was received in evidence as Exhibit 294.)

[fol. 577] The line extends from a connection with the Rock Island at Banks, Arkansas, 16 miles east to Warren, Arkansas, where it connects with the Mo. Pacific and through the Missouri Pacific with the Warren & Saline River Railway. The only other point served is Cloquet where the mills of the Southern Lumber Company and the Arkansas Lumber Company are located. In addition to the lumber traffic of these mills, the road handles merchandise and considerable carload traffic of a general nature (Tr. 3124). I have prepared a statement of the traffic of the road handled in 1926.

(Said document was received in evidence as Exhibit 295.)

We operate two passenger trains a day and one mixed freight and passenger train, with a round-trip daily out of Warren. At present we are settling car hire on what is known as the "C. S. 59" basis. Under this arrangement we paid $327 to the Rock Island and $23 to the Missouri Pacific in 1926 (Tr. 3125). We handled 5604 cars with an average detention of about three days so that under straight per diem we would have paid our connections about $16,812. In that year our interline freight revenue was $76,317.67. Straight per diem would have absorbed about 22%. 70% of our revenue comes from the transportation of forest products. The road is a tap line and its divisions are restricted by the Commission. We have twice asked for increase in divisions but both times the Commission has dismissed the case. It is clear that an increase in our operating expense resulting from per diem could not be offset (Tr. 3126). We have no complaint to make and are satisfied [fol. 578] with the present arrangement. We object, however, to Paragraph B of Rule 6 of the per diem rules. At present we are satisfied and apparently our connections are, as they have never indicated otherwise.

Cross-examination:

The Arkansas Lumber Company and the Southern Lumber Company each owns 50% of the railroad stock and are

the industries served by the road. About 75% of the road's traffic is that of the owning industries (Tr. 3127). To get the per diem that the road would have paid under the rules in 1926, I multiplied the 5604 cars on Exhibit 295 by 3. Some of those cars, such as tank cars and refirigerator cars move on a mileage basis and we don't pay per diem on them. So to get the per diem payment under the rule for 1926, those cars should have been eliminated which would have reduced the amount I mentioned (Tr. 3123). In 1925 our detention was only slightly over two days and has not been worse in 1926. I figure it at three days but it is probably less than that. That would further reduce our possible payments and would change the percentage of per diem payments to gross freight revenue. We apply the National Car Demurrage rules and collect demurrage from consignees and shippers. I have no financial statement of the road (Tr. 3129). The road owns no freight cars (Tr. 3130). In 1926 we had 457 local shipments on our line which were handled in foreign cars. Exhibit 293 shows that we had no local traffic in 1925 but that is a mistake as we did have some. I don't know what the demurrage collections were in interline traffic in 1926 (Tr. 3131). We have the same car hire arrangement with the Rock Island and the Missouri Pacific. It is the regular average agreement "C. S. 59" (Tr. 3132). Exhibit 295 shows 457 cars of local traffic (Tr. 3133). If the movement is limited [fol. 579] to traffic originated and terminating on the railroad the lumber should be eliminated and the rest of it would be local. I don't know what part of the 416 cars of lumber shown on Exhibit 296 were loaded and unloaded on our line. My appearance here is for the purpose of retaining what we now have (Tr. 3134). We are satisfied and so far as I know, our connections are satisfied. Our arrangement has been in effect since 1919. The road was a party to the tap line case and the divisions prescribed in 1912 have been increased since then.

G. W. Peabody was called as a witness and, having been duly sworn, testified as follows:

I am General Freight Agent of the Gulf & Sabine River Railway (Tr. 3125). I have prepared an answer to the questionnaire in this case.

(Said document was received in evidence as Exhibit 296.)

In line M, question 17, of this Exhibit, the date should be March 1, instead of July 1, and line 17 B should also read March 1. On the last page in answer to question 20, the total paid for car hire should be $11,334 instead of $16,334. That was the total paid in 1925 (Tr. 3136). The road is 6.2 miles long, with 5.8 miles of sidetracks. It connects with the Santa Fe and Southern Pacific at Nitram. Our other main line was abandoned in August, 1927. We operate two mixed trains each way each day between Nitram and Fullerton. We get our cars from the connections at Nitram, distribute them to the shippers, have them loaded and take them back to Nitram. Our average detention is from two to four days a car. Our principal tonnage is logs and lumber (Tr. 3137). The road is a party to the tap line case and receives divisions of 2½¢ per hundred pounds on lumber. We cannot have it increased as it is fixed by [fol. 5[illegible]0] order of the Interstate Commerce Commission. The road does not subscribe to the American Railway Association Per Diem rules and from 1917 to 1923 we paid per diem with a free time allowance of two days from both connections. We settled direct with them for all foreign cars. On March 1, 1923 our two day free time was withdrawn under demand of the American Railway Association. Our connections advised us that to their regret they were forced to strictly apply per diem rule 6 as amended in August, 1922. I don't know why the rule did not become effective on our line until 1923 (Tr. 3138). We were advised by both connections at about the same time in February, 1923, that Rule 6 must be enforced. Our General Freight Agent told me that the President of the Southern Pacific said that the Southern Pacific was forced by the American Railway Association to adhere to Rule 6. I went to see the officials of the Santa Fe and was told the new rule would be put in by them on March 1. When I returned I found a written notice to that effect. Our connections acted simultaneously under pressure of the American Railway Association. Our General Freight Agent was so advised and I confirmed this by a visit with Santa Fe officials (Tr. 3139). Both lines had always been friendly but both told me that the American Railway Association was behind the movement. We asked that Rule 6 be amended to permit the trunk lines to nego-

tiate per diem with our connections according to local circumstances, and that we be reimbursed retroactively to March 1, 1923, on the basis of the two days free time we [fol. 581] formerly had. We think the *the* present rule is unfair as the trunk lines get cars at Nitram with all terminal charges paid. We perform the service of the terminal and originating carrier and our divisions are restricted. Whereas the trunk lines get the long haul and the fat revenue without any per diem costs to and from Nitram. They pay no expense in taking the cars to the shippers and returning them under load. We pay that expense (Tr. 3140) at a revenue of 2½¢ per hundred pounds. That revenue is only on lumber. I have prepared a statement of comparative car hire cost on the road from March 1, 1923, to April 30, 1927.

(Said document was received in evidence as Exhibit 297.)

During this period we paid $47,781 in per diem. Whereas under the basis of two days free time we would have paid $14,195. On some short lines this rule is not in force, which is preferential to them and prejudicial to us (Tr. 3141). I have prepared a statement showing the relationship of our per diem to our interline earnings.

(Said document was received in evidence as Exhibit 298.)

The per diem figure shown in this Exhibit and in Exhibit 297 cover per diem cars only. On mileage cars or privately owned cars we paid 1½¢ and 2¢ per mile. I have prepared a statement showing the consist of our tonnage in 1926.

(Said document received in evidence as Exhibit 299.) (Tr. 3142.)

This statement shows the consist by carloads and tonnage and allocation to connections. If there is any error in this Exhibit I will check it and send in a substitute. The Exhibit was prepared under my direction.

Cross-examination:

70% of the railroad's stock is owned by stockholders of the Gulf Lumber Company (Tr. 3134). The directors of [fol. 582] the industries own 70% of the stock of the rail-

road. The lumber company is an industry on the road. The first page of Exhibit 296 is in error, as when the statement was made up we did not know who owned the stock. I said that the average detention in 1923 to 1927 was from two to five days per car. It might be possible that in 1925 the detention was 1.7 a car (Tr. 3144), as we get behind the cars to get them out. An average of five days in view of the 1925 showing would not be exceptional. I have no statement of the total number of foreign lines cars on our rails in 1926 with the total days detention to those cars (Tr. 3145). At the present time we have practically no lumber traffic (Tr. 3146) so that Exhibit 299 is not now representative of our freight tonnage. With respect to commodities other than lumber, our earnings are not limited by the decisions of the Commission, and lumber is an insignificant part of our traffic now. That is temporary as we abandoned part of our line owing to the closing of the lumber operations. The Gulf Lumber Company interests are now considering turning the plant into a turpentine plant (Tr. 3147). If that should fall through, we would eventually go out of business. Temporarily the lumber business is negligible, but we expect to resume operations within a short time, although it is not certain. We have 94 freight cars of our own, but they are not interchanged. We use them [fol. 583] to handle our local business only. The gravel shown on Exhibit 299 was handled in equipment we manufactured ourselves out of log cars (Tr. 3148). The 22,553 cars shown on Exhibit 296 must have been to points on our line only as it consisted of gravel which we transported to the end of our line and dumped. We handled the bulk of it in our own cars. We shipped from 40 to 50 cars a day (Tr. 3149), in our own cars, and the balance is handled in cars which we get from the Southern Pacific and Santa Fe. It was possible for us to handle 80 cars a day—about 40 of our own cars, but it is not probable. We did get certain cars from the Southern Pacific and Santa Fe on which we paid per diem, and that per diem is included in the per diem shown in Exhibit 297 as having been actually paid (Tr. 3150). I say that the percentage of per diem to earnings is too great even though in 1920 when we had two days free time our per diem was 10% of our interline earnings—more than it was in 1926 and 1927. In 1920 a number

of cars were detained under circumstances over which we had no control, and we had to pay the per diem which was due after the two days free time was taken out. At that time we had a basis of car hire which we want restored and which I said was all right (Tr. 3151). It was all right in 1920 for per diem to constitute about 11% of our earnings, since it accrued under circumstances over which we had no control, but to have it constitute 8% of our earnings in 1926 would be wrong as the conditions in 1920 were exceptional. We had two wrecks and a flood. I would say that [fol. 584] you could get the average earnings per car by dividing the 1925 interline earnings in Exhibit 298 by the number of interline loads shown in Exhibit 296. Exhibit 299 only covers interline traffic in forest products (Tr. 3152). The total traffic is not shown. Our road subscribes to the National Demurrage Rules and collects and retains its own demurrage. All of our traffic now moves on division of through rates. We have local rates but we have abandoned that part of our line. We only perform terminal switching, if a shipper orders a car switched and we make no charge for it. If we receive a foreign car and it goes to an industry, we place that car without charge (Tr. 3153). That is a team track delivery within our yard limit. On anything outside of the yard limit we make a switching charge. In Exhibit 297 the amount paid on straight per diem only covers per diem cars. Nothing is included on mileage cars.

G. W. PEABODY, having been previously called as witness, was recalled and testified (Tr. 3154):

I wish to add to my testimony with respect to the handling of local shipments of logs. We handle from 60 to 70 cars of logs a day into the mills, or about 1800 cars a month. The trains run two or three times a day. The rest of the 22,000 cars of local shipments is barrels, gravel and local stuff. None of this traffic was handled in foreign cars. It was all handled in our local equipment. Some of the cars make two or three trips a day and logs can be loaded and unloaded quickly (Tr. 3155).

[fol. 585] As shown in Exhibit 298 our average revenue would be fifteen or sixteen dollars a car. The words "full

time" in question 17 on the questionnaire mean straight per diem or a dollar a day from the time we took the cars until the time we returned them. We have paid this since March 1, 1923 and are now paying it. We apply the National Car Demurrage Rules (Tr. 3156). In 1920, when the general rate increases were granted, we got an increase in our local rates but not in our divisions on lumber. I don't know why we don't get it. I don't hear anything of it and don't know anything about it. The mileage of our road of 8.96 miles up to August, 1927, was correct (Tr. 3157). At the present time our first track mileage is 6.2 miles and we have 5.8 miles of yard track and sidings. We want two days free time and a reclaim from March 1, 1923, to the present time on the excess of two days that we have paid since that date. If the allowance was fair prior to March 1, 1923, it would be fair subsequently (Tr. 3158). After two days free time we wish the straight per diem that we have paid before. The road connects with the Gulf, Colorado & Santa Fe and the Southern Pacific at Nitram. The whole road is in Louisiana. The Southern Pacific reaches Nitram over the Santa Fe. We want our two days free time made retroactive to 1923, and want the Santa Fe and Southern Pacific to pay back to us all of the per diem that accrued on those two days (Tr. 3159). That would amount to $33,586. We have paid no dividends yet but have a large deficit to take care of. We have paid it ourselves up to now out of money borrowed from the Gulf Lumber Company which has a judgment against us for $304,308. If we get this money we will not turn all of it over to the [fol. 586] Gulf Lumber Company because what we owe them does not cover our entire deficit. I said that the trunk lines that enjoy a long haul will use a car without per diem cost on their own equipment (Tr. 3160). I don't mean that when a car is owned by a railroad and the road uses it itself that the car isn't costing it something. I mean that the point is the proper distribution of the cost. What I meant was that the trunk lines enjoy the long haul and fat revenue and among themselves move the car without per diem costs from and to Nitram. The Santa Fe allows three roads that I know of two days free time. They allow the Rio Grande Eastern three days and the King's Lake

& Pacific straight demurrage which I don't find listed in Exhibit 12 (Tr. 3161). The Southern Pacific allows the Shreveport, Houston & Gulf straight demurrage, and so far as I know, these arrangements have been in effect during the time they have refused us a similar arrangement. This is prejudicial to us and preferential to the railroads to which it is allowed. I could mention other roads that receive this allowance. In 1920 we had a flood that washed out some of our track, and caused car detention and we had two bad wrecks at a time when we had a number of cars on the line. That made per diem higher in that year than it has been before or since. The cars were detained a longer time than they would have been otherwise (Tr. 3162).

E. R. Cobb was called as a witness and, having been duly sworn, testified as follows:

I am General Auditor of the Fernwood, Columbia & Gulf Railroad. I have a statement to make in connection with [fol. 587] that railroad. It operates 44.14 miles. It connects at Fernwood with the Illinois Central and runs east to Tylertown, Mississippi, where it connects with the New Orleans Gt. Northern. It then runs east by north to Foxworth where it connects with the N. O. Gt. N., and up to Columbia where it connects with the same road, making three connections with the N. O. Gt. N. and one with the Gulf & Ship Island (Tr. 3163), a subsidiary of the Illinois Central at Columbia. We own 41.44 miles from Fernwood to Foxworth and .27 miles to the main line at Columbia. We use under contract 2.70 miles of New Orleans Gt. Northern track between Foxworth and Columbia. I have a map of the railroad.

(Said document received in evidence as Exhibit 300.)

I also have a statement of the income account of the road for 1926.

(Said document received in evidence as Exhibit 301.)

I have another statement showing the revenue freight carried by the road during 1926.

(Said document received in evidence as Exhibit 302.) (Tr. 3164.)

The last statement shows a total of 16,132 cars handled in 1926. I also have a statement showing cars handled and detention per car for 1926 and the first eight months of 1927.

(Said document received in evidence as Exhibit 303.)

The last exhibit shows that in 1926 we had average detention of 2.59 days per car and 2.57 days per for the eight months of 1927. That covers all the cars handled, including some overhead traffic (Tr. 3165). I have a statement of the log and local revenue handled by the road from January 1, 1926 to August 31, 1927.

(Said document received in evidence as Exhibit 304.)

The last exhibit covers shipments originating and terminating on our line and includes also shipments received [fol. 588] from and delivered to the N. O. Gt. N. at Tylertown and Foxworth. We do not interline with the New Orleans Gt. Northern. Our log revenue in 1926 of $130,497.25 was deducted from the gross revenue of $368,372.33 as no foreign cars were used in the log service. Our total revenue on interline was $267,875.08, and our car hire was $23,807.25, or 8.8% of the revenue (Tr. 3166). By revenue I mean revenue after the log revenue has been deducted. I have an income statement covering the first eight months of 1926 and the first eight months of 1927.

(Said document received in evidence as Exhibit 305.)

This exhibit shows that in 1927 our reduction in revenue was $92,889.26. Our reduction in operating expense was $51,966.85; reduction in net operating revenue was $40,892.51. Our average revenue per mile was $2111.10 and average expenses $1181.75. In the first eight months of 1926 we had a profit of $17,100.20 but in the first eight months of 1927 the actual loss was $21,904.21. The management at first did not intend to testify in this case (Tr. 3167) as the 1926 results were favorable and our people were satisfied. Now 90% of our revenue is derived from highly competitive traffic and we think that Paragraph B of Rule 6 of the per diem rules should be eliminated, which

would leave short lines free to negotiate with trunk lines and would leave trunk lines free to negotiate with short lines. We are a subscriber to the per diem agreement and a member of the American Railway Association. We do considerable switching and have considerable switching done on competitive traffic. We were forced to join the Association to secure reclaim. We have no complaint at present against per diem for the use of equipment, and think every car owner is entitled to compensation for the [fol. 589] rental of equipment, but there is a distinction between a car owner and a car user. A short line ought only pay proportionately for the use of equipment to the revenue it receives (Tr. 3168) and as Paragraph B of Rule 6 was made without consideration of us, our view is that it should be cancelled. We think it ought to be cancelled because we can't get reclaim unless we are a subscriber. If the Association might decide to increase the per diem, we would have no voice in that, and that is our main reason for appearing (Tr. 3169). We think the trunk lines ought to be able to deal with connections upon any basis they see fit, but that a car owner is entitled to whatever the car is worth. Also as a car user it ought to be divided upon an equitable basis between the users of cars. We feel that as we have no voice in making the rules of the American Railway Association, it ought not to tell the trunk line what it must do with the short line connections. We ought to be free to negotiate with them when our condition is such as to warrant us in going to them for concessions we feel are necessary (Tr. 3170).

Cross-examination:

Our stock is owned by A. F. Wortman, principally, but there is no community of interest between the railroad and any industry served by it. I don't know whether Wortman owns stock in the Fernwood Lumber Company or not. The lumber company itself does not own any. The road was originally built as a log road to serve the lumber interests and later made into a common carrier (Tr. 3171). Originally it was a party to the tap line case but we have been relieved by the Commission. There has been a change in [fol. 590] the stock ownership of the railroad since it was built but I don't know when it was. Wortman owns 99% of the railroad stock, but I don't know if he is interested

in the lumber company or not or whether he has any other interests in any other industry served. So far as I know, he is not interested in any industry served by the railroad. Exhibit 302 covers both our interline and local traffic (Tr. 3172), and shows our total traffic for 1926. Segregation between interline and local traffic is in Exhibit 304, which shows the segregation of revenue. We own our own cars for hauling logs and have enough to take care of our local traffic. I have made no segregation between the number of cars handled in interline and local traffic. The total cars handled was 16,132 (Tr. 3173). The cars shown in Exhibit 303 are interline cars. They are just the per diem cars and cover all with the exception of log cars which I deducted. It includes our interline traffic and the local traffic handled in foreign per diem cars. None were handled in local traffic, so that it is all interline traffic. It results that in 1926 we handled 8218 cars in interline traffic (Tr. 3174). Quite a number of the cars handled a load inbound and a load outbound. The number given is of car units. The 1646 cars shown in Exhibit 302 represents traffic originating on other lines and moving inbound to us. The same exhibit includes the log traffic. I have no statement showing the loads originated on our line and delivered to other lines (Tr. 3175). On Exhibit 304 the log revenue is shown [fol. 591] separately and is deducted from the gross revenue for 1926. The local revenue covers all tonnage received from and delivered to the N. O. Gt. N., as we have no through billing arrangements with that road. Local revenue does not mean revenue on cars local to our road (Tr. 3176). The heading "Local Revenue" on Exhibit 304 is all revenue on cars handled by us and foreign lines, whether on through billing or otherwise. It is not revenue from traffic originating and terminating on our line, but includes that revenue which is very small proportionately. That traffic is not over 5% of all our traffic. The local revenue on Exhibit 303 includes shipments received and delivered to N. O. Gt. N. and also includes shipments originating and terminating on our line (Tr. 3177). We have some of that traffic. It is all handled in our own cars but is traffic in addition to the log traffic. None of our cars are interchanged with connecting lines. Our road subscribes to the National Car Demurrage Rules and collects and retains its own de-

murrage. All our revenue on interline traffic is derived from divisions (Tr. 3178). We have through rates with the N. O. Gt. N. and get divisions of those rates. It is all handled on divisions. We perform terminal switching service on which we get a reclaim at Tylertown, Columbia and Fernwood (Tr. 3179). We connect at Fernwood with the Illinois Central; at Tylertown with the N. O. Gt. N. and at Columbia with the Gulf & Ship Island. Wet get a switching charge for our terminal switching and that charge is absorbed by the connecting trunk lines in some instances. [fol. 592] The consignee pays it on non-competitive business. Where we perform terminal switching we pay the per diem and get a reclaim under the rules. We have never made a complaint to the American Railway Association, or any official with respect to the rules that I now complain of (Tr. 3180). I don't know whether crtictism of that sort is invited or not but I have made no complaint since I have been connected with the company. I have been general auditor since September 1, 1927, and before that I was in the traffic department for a year. I said that conditions have changed and that induced the management to take the position that Rule 6 is not proper. The specific change I referred to was the closing down of the Fernwood Lumber Company. We are at present losing money (Tr. 3181) and the owners will not continue to operate the property at a loss. My view is that Paragraph B of Rule 6 prohibits the short lines from getting what they are entitled to. The connections I find between my proposed negotiations and the fact that the traffic is competitive is because we work closely with the trunk lines and they get the lion's share of the revenue. At the present time, they have no alternative but to enforce the rule, but I would like to have them given an alternative (Tr. 3182). If they had it we would go to them at the proper time and expect to get relief. We would not tell them in so many words that if they gave us relief we would see that they get some traffic, but that would be the effect of it. We want the rule cancelled because that is the only possible connection between the fact that our traffic is competitive and the fact that we want to deal with our trunk line free of the rule.

[fol. 593] That is what we want to do. Our hope is that if the rule is changed so we can do that, we will be able to save

enough on car hire to make up the loss we have sustained on account of the decreasing traffic. Our traffic has been diminished in the last year or two, because of the cutting out of the lumber (Tr. 3183). On Exhibit 301 the first item at the top is revenue derived from all sources. It is operating revenue. We run a mixed double-daily passenger service. During Federal control we had two days free time with per diem. That arrangement terminated at the end of Federal control. I don't know what the divisional arrangement was at that time. We have asked for no finding in this case, but only want Rule 6 of Paragraph B abolished (Tr. 3184). On Exhibit 304 the figure of $47,094 in 1926 represents revenue on local waybills, and includes tonnage received from and delivered to the N. O. Gt. N. I don't know what percent we are now earning on our book investment (Tr. 3185). The driving of a trade on car hire had not entered my mind when I answered counsel to the effect that if we could get a concession from one railroad, we would go to the other to drive a better trade. To protect our present interests in the case of changes in rules on rates, we want to be able to deal with our connections on any condition that may arise as it affects per diem. I answered counsel as I did because I did not understand the question. Our line is a member of the American Short Line Association and I know that per diem as it affects short lines has been under negotiation between that Association and the American Railway Association (Tr. 3186). It was not necessary for us to negotiate with the A. R. A. and we were represented by the short line Association and hoped that they would be able to make an agreement.

[fol. 594] The American Railway Association has never asked us for suggestions as to rules and our line has no voice in the making of them.

H. S. Frazier was called as a witness and, having been duly sworn, testified as follows:

I am General Freight Agent of the Natchez, Columbia & Mobile Railroad (Tr. 3187). I have prepared an answer to the questionnaire.

(Said document received in evidence as Exhibit 306.)

I also have a map of the railroad.

(Said document received in evidence as Exhibit 307.)

I have also prepared a statement showing a comparison of earnings and per diem on this road and foreign lines on 28 inbound cars handled in February, 1927.

(Said document received in evidence as Exhibit 308.) (Tr. 3188.)

I have also prepared a statement of comparative per diem and revenue accruals on our line and foreign lines on 191 outbound carloads handled in February, 1927.

(Said document received in evidence as Exhibit 309.)

I have also prepared a summary of the data shown in Exhibit 308 and Exhibit 309.

(Said document received in evidence as Exhibit 310.)

I have also prepared a statement of various car hire bases in connection with the traffic of this road.

(Said document received in evidence as Exhibit 311.) (Tr. 3189.)

I have also prepared an Exhibit showing average revenue on foreign cars per day.

(Said document received in evidence as Exhibit 312.)

Our railroad connects with the Illinois Central at Norfield, Mississippi, and runs 29 miles east to Tilton where it connects with the N. O. Gt. N. It then runs four miles beyond Tilton to a connection with the Gulf & Ship Island at Oakvale. 95% of our tonnage is outbound and 99% of our outbound tonnage is lumber and forest products shipped by the proprietary industry, the Denkman Lumber Com- [fol. 595] pany. The road is a tap line, and its revenue on substantially all tonnage is restricted by the tap line scale (Tr. 3190). East from Norfield we have six stations, most of which ship ties and some cotton. Our inbound tonnage is very light and consists principally of merchandise and miscellaneous supplies. We receive under the tap line scale $3 a car for switching one mile to the Illinois Central at Norfield, and 4½ cents per hundred pounds on interstate traffic from Norfield to our other two connections. The average

revenue on this line haul traffic is about 3 cents per hundred pounds, or approximately $15 per car for a minimum 29 mile haul and a maximum 33 mile haul (Tr. 3192). The road subscribes to the Car Service and Per Diem Agreement and pays $1 a day direct to car owners from midnight to midnight. We apply the regular straight demurrage basis to our patron. In July, 1927, we tried to get a more favorable basis of car hire and wrote the superintendent of Transportation of the I. C., telling him that all empties for the Denkman Lumber Company were delivered by the I. C. to us at Norfield; that on cars from Norfield via I. C. we received a switching reclaim but paid per diem on cars loaded via Oakvale and the Gulf & Ship Island; that since the movement to Oakvale was practically a switch movement (Tr. 3192), we wanted to have reclaim allowed on it the same as on loads delivered at Norfield. Our road connects with the Gulf & Ship Island, a subsidiary of the Illinois Central at Oakvale. We received a reply saying that we received a flat rate of $3 per car on loads delivered at [fol. 596] Norfield and received a reclaim, but that on traffic via Oakvale our division ranged from 4 to 4½ cents per hundred pounds, and since we participated in the through rate, the reclaim could not be allowed as it was contrary to car service rules. The letter was signed by C. R. Young, Superintendent of Transportation of the I. C. (Tr. 3193). We are unable to see any difference between switching reclaim and line haul free time, and cannot understand why we should be allowed to reclaim on cars switched at Norfield but are allowed no free time on cars interchanged to the Illinois Central at Oakvale when the detention is about the same. Our revenues are very small and if we cannot get more divisions, then we are justified in getting help through car hire. Since our road originates traffic for its connections at a cost much less than that represented by the shrinking of their revenue, they can afford to make an agreement with us on per diem since we have to stand terminal and originating delays, whereas they get the cars loaded for movement. We subscribe to Car Service and Per Diem Rules because as a non-subscriber we could get no reclaim at Norfield and we could get no per diem on the 13 cars we interchange (Tr. 3194). Those rules force us to be subscribers. Of our total number of outbound carloads

of lumber, 25% move on a switching revenue of $3 per car and the balance in line haul movement from Tilton to Oakvale. About half the cars we use are owned by the systems [fol. 597] with which we connect. We want reclaim on all cars, of actual time up to 5 days with regular per diem thereafter. We desire to free ourselves from per diem except that if we hold a car beyond 5 days we would expect to pay for it (Tr. 3195). Demurrage accruing within the five days free time should be credited to our connections. We would not necessarily be willing to allow a reclaim to foreign lines or on the 13 cars which we interchange, because we feel that the car owners are entitled to just compensation, but we are not concerned as to what arrangements our connections may make with reference to the split of per diem between them. If the I. C. wants to allow free time on one of our cars to one of its connections that would be none of our business, so long as the I. C. paid us per diem. We are willing to allow the leeway for local arrangements that we ask for. We think that a rigid application to straight per diem does not work out fairly to our road, because we are an originating and feeder line, and as such the allocation of car hire cost to car owners as between car users works out unfavorably to a short line such as ours where such allocation is not a rigid time basis. Such an allocation might be fair if commensurate with the division of earnings (Tr. 3196). My Exhibit 308 shows a comparison in earnings on per diem on inbound traffic in February, 1927, and my Exhibit 309 shows it as to outbound loads. Exhibit 310 is a summary of those two exhibits. Of the [fol. 598] total of 219 carloads, we received 20.8% of the gross revenue. On the inbound cars we paid 41.1% of the per diem. On those same inbound cars our earnings were 43.1% of the total revenue, but our inbound rates are much higher and that traffic is negligible in our revenues. I have prepared a statement of comparative car hire bases on the same 191 cars referred to in the three preceding exhibits. On these cars (Tr. 3197) we paid $692 straight per diem. We would have paid $381 with two days free time; $577 on a demurrage basis; $113.94 on a mileage basis of 1½¢ a mile; and $151.92 on a mileage basis of 2¢. My exhibit 312 shows our average revenue for foreign cars in the year 1926, showing that foreign cars in 1926 had revenue earn-

ings of $4.78 per day to us while on our line. Our answer to question 20 in the questionnaire is misleading. In 1925 of our gross revenue of $184,382. only 35% accrued from interline traffic; the balance accruing from local log transportation. Our revenue from joint haul traffic in foreign cars was only about $65,000. The percentage of car hire after deducting reclaims, was about 13.6% instead of 4.8% as shown in question 20 (Tr. 3198). On Exhibit 312 it appears that in 1926 our total freight earnings were $191,662.66 of which amount $122,168 accrued from purely local traffic.

Cross-examination:

On Exhibit 306 in the answers to questions 7 and 8, you can get our average detention to foreign line equipment in 1925, by dividing the total number of cars shown into the total number of days on line. 4.17 days per car is approxi- [fol. 599] mately correct. It takes us that long to handle cars because of the detention in the loading shed (Tr. 3199). That is a shipper's and consignee's detention. We collected $97 in demurrage that year because if we place a car at ten o'clock, the consignee has practically three days free. The shipper or consignee did not hold every car the maximum period and yet release it before demurrage started because we collected $97 on 3552 cars. I am quite sure the figures are correct. We operate two log trains a day and one mixed train, but our log trains do not handle interline traffic. That is all handled in the one train which we operate each way daily (Tr. 3200). The crews start to work at 6:30 in the morning and switch at Norfield until 11:00. They then go to Oakvale and return that night. On a shipment from Jayess to Norfield, the car would be taken over about 3:00 o'clock in the afternoon but if the loading was not finished at that time, it would be held over until 3:00 o'clock the next day. In the opposite direction a car would be taken about noon and if it was not finished then it would be held over until the next day (Tr. 3201). We start our distributing service east from Norfield at 11:00 o'clock in the morning and leave on the return trip about two o'clock. The train goes to Oakvale in the morning and comes back in the afternoon each day in the week and on holidays. The 14,169 carloads handled locally in 1925 were logs handled in our

own equipment. There is very little other local traffic and (Tr. 3202) we get division of joint rates on practically all of our interline traffic except terminal switching, although [fol. 600] to some points in Mississippi the traffic moves on a combination basis. On terminal switching we get a switching charge. The statement in Exhibit 306 that we receive nothing for car hire is in error, as we receive a dollar a day for our cars that are interchanged, for all the time they are off our rails (Tr. 3203). I said that the car hire expense of a railroad handling carload traffic ought to bear some relation to the revenue that the road received out of hauling the traffic. It should be approximately the same in the case of each road. The inbound loads which I show on Exhibit 310 are representative and indicate that on that Exhibit the per diem expense is now distributed in about the proper proportion between our line and the foreign lines (Tr. 3204). We did not show the comparison on outbound traffic, as we did not know what the detention was on foreign lines. I don't know what the relationship is. It may be the same as on inbound and if so, the distribution of per diem costs is all right the way it is. The earnings of $4.78 per foreign car per day shown in Exhibit 312 is for 1926. There is (Tr. 3205) no average detention figure by which to multiply $4.78 to get the average earnings per car. There is no way of getting the average detention per loaded car as the time is figured against both empties and loaded cars. We don't use foreign cars, in local service. We get inbound loads with merchandise for Norfield, but that is interchange [fol. 601] traffic. We don't use foreign cars for local business. I don't think that dividing the number of loads interchanged into the car days would give the average detention per loaded car as the detention shown is detention on loads and empties. To get detention on loads we have one factor missing because the total detention applies on loads and empties (Tr. 3207). To get the average earnings per day on foreign cars I used the detention on loaded and empties and it shows what we earned per foreign car per day while the car was on our line. We have charged against the earnings on the loaded cars possibly a lot of detention on an empty car not related to the load. The earnings shown are those per car per day on our line, whether the car is loaded or empty (Tr. 3208). Our average detention in 1926 was

3½ to 4 days, but I haven't the number of cars. I would have to estimate that (Tr. 3209). On Exhibit 308 I estimated the per diem on foreign lines by adding two days for loading before movement. I took the waybill date, the date the car was interchanged to our line to it added two days for loading and set that up as the foreign per diem (Tr. 3210). On inbound cars I charged up per diem that accrued until the car was made empty and stopped the per diem as soon as the car was released. I don't know whether demurrage accrued on these cars and I have made no deduction from the per diem figures. If any cars were held over the two days we would have collected demurrage. The [fol. 602] revenue to this line which I have shown is net without deductions for any absorption but in the case of the foreign line revenue I presume it is not true in the case of traffic from New Orleans, particularly (Tr. 3211). On that traffic the trunk line sustained some absorptions which have the effect of reducing the net revenue which would be comparable with our revenue. If those absorptions were deducted the percentage relationship of the per diem on foreign line to the revenue would be increased. When I said that one of our connections received traffic originated by us at less cost than it would sustain if it originated the traffic itself, I meant that we performed all the terminal switching service. I did not intend to say that it would cost the connecting line to perform the service itself more than it allows us (Tr. 3212). We want a reclaim on the line haul traffic which we handle and on which we receive a division of the rate. Our shortest haul on line haul is 29 miles to Tilton and 33 miles to Oakvale. The average is about 30 miles. I think we are entitled to a reclaim because we only haul it that distance, but I would not say that every railroad that hauls a car only 30 miles is entitled to reclaim. You must consider the amount of earnings that a short line can make. If a trunk line acted as an intermediate carrier and hauls a car for thirty miles and gets less revenue than we did, I would not say that it was entitled to a reclaim because it has more revenue (Tr. 3213). I mean that it has more revenue from other sources and can afford to lose money and we can't. We want to use foreign line equipment, get a reclaim on it and pay nothing for it, but still [fol. 603] want a dollar a day for our own cars. If we could have a reciprocal arrangement we might work out an ar-

rangement whereby we would get nothing for our cars when on foreign lines. We would like, however, to get per diem on our cars (Tr. 3214). My idea is that the car owner is entitled to get his dollar a day and as a car owner we are entitled to a dollar a day, and the foreign car owner is entitled to his dollar a day. If the I. C. owns a car which we interchange with it, I don't think it is entitled to a dollar a day because it has a lot of long haul traffic on which it gets high revenue, while we get a low revenue (Tr. 3215). I mean ours is low comparatively. On the inbound cars in Exhibit 308 we get 25% of the revenue and 50% of the revenue in many cases over a much shorter haul, but that is short haul stuff. As between us and our connecting line on that traffic, we are getting more revenue on a mileage basis than they are. On the first car on Exhibit 309, covering outbound traffic, we handled the car nine miles, from Ruth to Norfield and received 34½% of the revenue. The I. C. handled it from Norfield to New Orleans, 116 miles, and received the balance (Tr. 3216), out of which it absorbed the terminal charges at New Orleans. In that case I don't think we are getting the worst of the division, nor do I say that in that particular case the I. C. made so much that as a car owner it should waive per diem. I would not differentiate in the application of my prineiple as to whether or not the collecting line had enough money, as in individual cases they won't bear up but most of our traffic is long haul stuff to the Ohio River and north and into Maine, New York and Pennsylvania. That is the long haul stuff. The stock [fol. 604] of the railroad is owned by individuals but those individuals, I understand, also own the Denkman Lumber Company (Tr. 3217). The Denkman Company is really the proprietary industry. All of the stock is owned that way. Our line subscribes to the National Car Demurrage Rules and collects and retains its own demurrage. On the outbound tonnage shown on Exhibit 309 most of it is long haul tonnage. My theory is that the users of a car, whoever it is, should pay for the car on an equitable basis (Tr. 3219). In the same — if I rented a house jointly and I had three rooms and they had nine rooms I would expect them to pay on the basis of the rooms. I don't know from experience, but I understand that terminal service is more expensive than line haul service. Exhibit 312 is gotten up in the usual way, to show the number of days foreign cars were on line in

1926, whether loaded or empty, and what the cost is to us. We take all the time. Our inbound traffic is short haul (Tr. 3219). Our train begins switching at 6:30 in the morning. The I. C. delivers cars to us at 10 or 11. Many times we place the car the same morning, and many times we don't place it until the next morning. The delivery to us at 10 o'clock is inconstant as it varies with freight train service. The train may be due at 10:00 and not get in until 12:00. If we get it at 10:00 we place it that day and the shipper has 48 hours free time after the next 7 A. M. We take it away from the shipper the third day at 10:00 in the morning which would sometimes be the fourth day from the interchange and sometimes the third day (Tr. 3220). Once in a [fol. 605] while it is the fifth day. If a consignee doesn't delay a car it will get out the fourth day. If the I. C. delivers a car to us at 11 and our train leaves at 10, the car stays over a day. Four days is the normal time if we take the car out the delivery day, and five days if it stays at the terminal for a day (Tr. 3221). About 95% of our 1926 traffic came from the Denkman Lumber Company. Some cars stay at the mill on Sundays. The 191 cars shown in Exhibit 309 are not selected loadings. It includes all outbound traffic in February, 1927. Except a few local shipments about 25% of our outbound traffic is handled in terminal switching service, on which we receive a reclaim. Our switching charge is $3.00 but the statement does not include the switching charge (Tr. 3222). It only includes line haul cars. I don't know what our aggregate per diem bill was in 1925 or 1926 before we collected reclaim. The 14,803 in questions 7 and 8 of the questionnaire is the number of days foreign cars are on line in 1925. It may include some mileage cars upon which we pay mileage instead of per diem. The figure represents the total number of days foreign cars were on our line in 1925. The items of 176 and 159 at the top of the sheet represent the total number of loads interchanged inbound in 1925 (Tr. 3223). On the next sheet in question 9 the items 206 and 2158 represent the total loads interchanged outbound in 1925. The I. C. delivered to us 1103 cars empty in 1925 and we delivered to [fol. 606] it 206 loaded cars. The other inbound empties went out in road haul movement to the N. O. Gt. N., which delivered many of them to the I. C. at Jackson. The 206

loaded cars delivered to the I. C. were road haul cars and the balance were switch cars. According to the statement we received more empties than we delivered loaded. We did not return empty cars without a load, but we returned them to the I. C. on a switch movement, and when we returned them on a switch movement, we did not count them as a load delivered. The others are shown in connection with terminal switch cars. I don't know why our road shows such large deficits in net railway operating income from 1920-24. I wasn't with the railroad at that time (Tr. 3225). If we received an increase in our divisions it would take care of us all right. We asked these roads for that and they said "No". The first car on Exhibit 309 on which our revenue was $24.08, is a car on which our division was 4½ cents per hundred pounds. Our present divisions on lumber were made on the opening of the Oakvale route in May, 1926. I don't know whether the divisions fixed by the Commission have been changed since the decision in 1912 (Tr. 3226).

CHARLES H. MILLER was called as a witness and, having been duly sworn, testified as follows:

I am Traffic Manager of the New Orleans, Natalbany and Natchez Railway. I have executed an answer to the ques-
[fol. 607] tionnaire in this case.

(Said document received in evidence as Exhibit 313.)

80% of our gross freight revenue is derived from purely local traffic on our line. Question 12 in the answer has been left blank but the number of loads originating on the line should be included. I will supply them as soon as possible (Tr. 3227). I have prepared a map of the railroad.

(Said document introduced in evidence as Exhibit 314.)

Our line has one connection only—with the I. C. at Natalbany, Louisiana. From there we run 29 miles to Grangeville, Louisiana, with nine intermediate stations. Our principal tonnage is from the mills of the Natalbany Lumber Company at Mason, about a mile from our junction with the I. C. 99% of our joint traffic is outbound and 99%

of that outbound tonnage is lumber originated by the parent industry (Tr. 3228), above named. On this traffic the switching allowance is a maximum of $3.00 a car to destination- other than Louisiana and Mississippi, with $1.80 per car on shipments to New Orleans. In the last few months we have been getting $3 a car on everything. On 99% of our traffic we receive revenue not to exceed $3 a car. 80% of the outbound movement was on the $3 allowance to destinations north of the Ohio River, and $2.70 to destinations south of the Ohio River. 5% went to Louisiana and Mississippi on which we had no allowance whatever except on shipments to New Orleans. 15% went to New Orleans on an allowance of $1.80 a car. We are now getting $3 a car on all cars (Tr. 3229). 90% of our traffic consists [fol. 608] of logs for mills of the proprietary industry at Mason delivered at a cheap milling-in-transit rate on the same scale as prevails on the I. C. and other trunk lines in order to put our mills on a parity with other mills. We did this on the assumption that we would be reimbursed on the outbound tonnage, the same as other trunk lines are reimbursed but the Commission by its decision in the tap line case deprives us of this privilege on the outbound tonnage. In 1926 we handled 100 carloads other than those moved on a switching charge and on these cars our average detention was about four days. We are not satisfied with the average of $3 to $4 per car per diem on these 100 carloads (Tr. 3230). We subscribe to Car Service and Per Diem agreement to get reclaims on cars delivered in switching service from the mills at Mason. We are satisfied with reclaims on cars in switching service but we think the method is cumbersome and costly; we would prefer to make settlement direct with the I. C. for all foreign cars rather than to make daily reports and monthly settlements with car owners all over the country. As I recall it, the direct settlement with the I. C. prevailed prior to 1914. We were then advised because of the change in the A. R. A. rules we had to become members of the Association and subscribers to get a continuance of the reclaim allowance, no reclaim being allowed to a non-subscriber. We object to per diem Rule 5 which excludes a non-subscriber from reclaim. It seems to us that as a part of the national railway trans-

portation system we are entitled to certain privileges (Tr. [fol. 609] 3231) and not because we may or may not be a member of some particular association. I have prepared a statement showing a comparison of per diem and earnings on 60 inbound cars and 153 outbound cars in February, 1927. My first statement covers the 60 inbound cars.

(Said document received in evidence as Exhibit 315.)

My next statement covers 153 outbound cars.

(Said document received in evidence as Exhibit 316.) (Tr. 3232.)

My next statetment is a summary of the information in the two preceding Exhibits.

(Said document received in evidence as Exhibit 317.)

The last exhibit shows that on 60 inbound cars we received 22.7% of earnings and 72.4% of per diem. On the 153 outbound cars, the bulk of our tonnage, we received 2½% of the earning. On the inbound traffic our per diem was 23.08% of our earnings, whereas on foreign lines the per diem was 2.59% of the earnings. On the 153 outbound cars without reclaim the cost of per diem would be 165.78% of the revenue. About half of the cars we use in interchange service are system cars of the I. C. and the other half cars of other railroads. I have prepared a statement showing average revenue for foreign cars on our line per day (Tr. 3226).

(Said document received in evidence as Exhibit 318.)

In 1926 our freight earnings were $94,453.21, of which $78,418 accrued from local traffic, in local cars. Our average earnings for foreign freight cars per day were $1.96. I also call your attention to the consistent and continuous deficits in question 20 of the questionnaire in the years 1920 to 1925 inclusive. We think that the privilege of switching reclaim should be extended to all short line railroads engaged in that service, irrespective of membership [fol. 610] in the A. R. A. We also think there should be no difference between switching reclaims and line haul free time, as it applies to short lines, and ask that the same reclaim be extended to our line haul traffic. Instead of paying per diem and being allowed a reclaim we would prefer

to settle directly with the I. C. on all foreign cars on a net basis to the extent we are now allowed reclaim (Tr. 3234).

Cross-examination:

The railroad is owned by individuals who also own the Natalbany Lumber Co. All of the railroad stock is owned by those individuals. None of our cars are interchanged. On Exhibit 313 the average detention can be secured by dividing the total number of cars, 2790, into the days on line, 9560, producing approximately 3½ days. I added 185 "no days" making the total number of car days 9745 instead of 9560. (Tr. 3235). The detention shown in the Exhibit includes detention in terminal switching and all other detention. I have not figured the average detention on cars in terminal switching. The per diem on car hire includes everything. Our fruit and vegetable traffic is substantially moved by express and there are cars on a mileage basis. Most of our inbound business is handled in refrigerator cars paid for on a mileage basis, and I have adjusted that to per diem for the purposes in hand. (Tr. 3236). I am sure that includes everything our people paid for cars. We have not charged per diem on the mileage cars, and the cars handled in line haul and switching service on a mileage basis are included in the per diem item. The figure of 9559.95 is the total number of days that the cars handled in terminal switching were delayed in the terminal. The other item on the second preceding page includes all cars on the line. (Tr. 3237). That includes everything and this is cars [fol. 611] delivered on a switching basis for loading at the mill. Te figure of 9559 in question 10 represents our payment at $1 per diem. That is just cars delivered for loading at the mill and doesn't include refrigerator or road haul cars. No mileage is paid on a refrigerator car in switching service. The figure of 1969 is total freight carrying cars which doubtless includes I. C. refrigerators. I am talking of the answer to questions 7 and 8. The figure in question 10 is foreign cars handled in terminal switching service. (Tr. 3238). I think the I. C. refrigerators were on per diem basis in 1925 and were not mileage cars. The mileage applies though in the Exhibit for February, 1927 as they were put on mileage in 1927. Prior to that they were on per diem basis and all these figures are good. The

detention of 4.8 days on cars handled in terminal switching, as compared with the detention of 3.4 days on line haul cars, is due to the terminal detention. The terminal cars are placed by the local. The switching at the mill is done in the evenng and the empties delivered at night or during the day will stay on the connection until the local gets in at 3 o'clock and switches them, and there is no switching again except in emergency (Tr. 3139), until 3 o'clock in the next afternoon. The orders are filled from time to time during the day as suits the convenience of the carriers. The detention of 4.8 days is probably due in part to the holding of empty cars for loading at the mill. Since these exhibits were prepared we have eliminated a good deal of dead time. When cars were plentiful they would drop off 40 or 50 cars, a week's supply, just to get rid of them. The car distrib- [fol. 612] utor at McComb wanted us to take them. Since I have got on to it we don't take them. Previously it was arranged that the track could be filled up with them and we would interchange them as we needed them but in the meantime with the change of agents they would interchange the whole bunch when they were set out. (Tr. 3240). That principally explains the detention of 4.8 days in terminal switching. There were also bad delays in the loading of outbound business. That is shown on Exhibit 316. There are bad delays and that caused me to take hold of the matter and get it ironed out. The delays were on cars sent to the owning industry for loading. Some of the shipments are manufactured very slowly and they are 4, 5 or 6 days loading the stuff. That was the fault of the industry but it was there just the same, and then it was contributed to by the delivery of more cars than we needed, merely to get rid of the cars. We paid per diem although there was a reclaim after 5 days. (Tr. 3241). We had $863 in demurrage which is a good deal. That situation accounts for the fact that we had to pay $9500 per diem on terminal switching and only got $6900 back; that and slow loading. I hope that the situation outlined in the answer to question 10 has changed, but it hasn't changed to the extent that gives us the needed relief. I knew before that we did not have to take empty cars in excess of our needs, but we did it due to the change in personnel and handling. We are still confronted by the slow loading at the mill. (Tr. 3242). That

is speeded up as much as it can be speeded but they manu-
[fol. 613] facture direct into the cars. I can't make the mill do anything. We subscribe to the National Demurrage Rules. It is the practice everywhere for the mill to manufacture into the cars while they are standing. They manufacture lumber, box shooks and flooring which is run right from the planer into the car. (Tr. 3243). They ordinarily load a car in a day but it may run over into a second day. What I say is to the best of my knowledge and belief. We subscribe to the National Demurrage Rules and collect and retain our own demurrage. We apply the average agreement against the mill. (Tr. 3244). In reclaiming we treat each car separately and cannot average one day cars with seven day cars. The $3 which we receive is a switching allowance which applies on outbound traffic manufactured from the logs that are brought in at a cheap milling in transit rate. That is the charge as it was fixed in the seventh supplemental order in the tap line case. The Commission originally gave us the sum of $1.50 a day. We get a reclaim on cars handled outbound under the $3 charge and there is a shrinkage on the part of the trunk line through rate. (Tr. 3245). We get a reclaim on the cars handled on the $1.80 charge. We get a reclaim on all cars interchanged in switch movement and that is a switch movement. Substantially all of the per diem shown on Exhibit 316 was subject to reclaim arrangement. $605 accrued in per diem but I don't know how much was reclaimed. The reclaim would be figured under the rules of the Association. On the inbound traffic shown in Exhibit 315 there were 60 cars that accrued per diem of $257.00 (Tr. 3246). That is some-
[fol. 614] thing over four days. None of it was terminal switching business. It was all line haul traffic. It includes our company coal which came in foreign cars and that is where the bad delays occurred. They were sometimes bunched. Some of the amounts ran up to $22 which is company coal. I made no computation of what the per diem would be if the company coal was eliminated. The 60 cars ran an average of better than 4 days, including the bad days, and I would say that the excess over the average detention in 1925 was accounted for by the company coal (Tr. 3247). The ordinary car, particularly the refrigerators, go out today and come back tonight. The I. C. refrig-

erator cars marked with a star did not accrue any per diem. They are on a mileage basis. For the purpose in hand I showed accruing per diem though we paid no per diem on them. It is a disadvantage in having refrigerators as they are not available for return loading. Had they been box cars we would have loaded all of them. I ascertained the per diem on foreign line cars. I took the date of the waybill. There is no assumption of two days. I know that on the stuff into New Orleans the cars go in and load out on the same day (Tr. 3248). I have not added two days to the per diem on foreign lines. I have taken the number of days from date of the waybill up to the time the car is interchanged to us. On our road I have taken the date of interchange up to the date of return to the I. C. I have included per diem from the date of unloading to the time the car was returned. On the 22 day car I have shown 6 days per diem on the I. C. That car came from Henderson, Kentucky, on the I. C. and the date shown is the date the car [fol. 615] was billed (Tr. 3249). The car did not stand longer than the day it was loaded as the mines load the cars right away. I can't say that in all these cases no demurrage accrued on coal held for loading at the mine, but from my experience the coal was loaded as quickly as the car was available and was billed out as quickly as the clerical work could be done. I say this from general observation of mine work at this time of the year. I have allowed no per diem while the car was being loaded. That was the day they were billed out (Tr. 3250). My figures are based on the assumption that the car was loaded on the day it was billed. I have made no allowance to the I. C. or to the foreign lines similar to the per diem on our rails from the time we received the car through the time it was unloaded and until we got it back to the I. C. I have no means of doing so. The revenue of our line is net to it without deduction for absorption of other expenses (Tr. 3251). I checked these waybills personally and I don't recall a single instance where anything moved to the I. C. by a foreign connection. There were some shipments from Chicago to E. St. Louis and Memphis, but except for that they did not have any long hauls. On the first car which originated at New Orleans the I. C. would make absorption. They would have to get it there. They have to figure that

out as I have no means of doing it. There is no absorption from connecting lines to reduce the I. C. revenue. It is all local business shipped by New Orleans merchants which is loaded at their merchandise warehouse (Tr. 3252). Every car is loaded locally on the I. C. They load a car a day for us at their freight house in New Orleans. The Exhibit in-
[fol. 616] cludes every car we received loaded in February. The freight from New Orleans is shipped by the New Orleans merchants and is delivered to the I. C. freight house It is not carload stuff. The fertilizer in R. I. car 33183 was loaded in New Orleans, probably at the plant on the I. C. (Tr. 3253). I don't know who the consignor was but can check it up. Our connection with the I. C. is about 55 miles from New Orleans. We have no cars which are interchanged. In our Exhibit 318 we have taken the empty car itself into account. Under our reclaim arrangement we reclaim the actual time up to 5 days but not in excess of 5 days. After that we pay per diem. We pay the entire per diem and reclaim up to five days on individual cars. There is no averaging of cars. That is my understanding but I may be wrong on that (Tr. 3154). I will advise you as to what our reclaim arrangement is. I assume that the difference between the demurrage collected and the excess over reclaim of per diem paid is due to the fact that our consignees and consignors have the average agreement and can average six day cars in with their one day cars whereas under the reclaim rules we cannot average in that way (Tr. 3255). Our method of determining reclaim has been in vogue for years. I don't know how it was arranged originally. I understand that when we first started our cars cost us nothing.

Examiner Rice: The hearing is adjourned until October 11, at Atlanta, Georgia.

[fol. 617] Proceedings at Atlanta, Georgia, October 11, 1927

Examiner Rice: The Interstate Commerce Commission has set for further hearing at this time and place Docket No. 17801, Rules for Car Hire Settlement between Rail-

roads, and the various cases which are consolidated therewith.

J. A. STREYER was called as a witness and, being duly sworn, testified as follows:

I offer in evidence a map of the territory bounded by the Mississippi River on the west, the Ohio River and the Virginia cities on the north and east, showing practically all the railroads in that territory. The short line railroads are shown in red and are numbered, the numbers being shown in the corner of the map (Tr. 3269).

(Said document received in evidence as Exhibit No. 319.)

LEWIS SANDERS was called as a witness and, being duly sworn, testified as follows:

I am General Manager of the Gainesville & Northwestern Railroad and Vice President of the Piedmont Corporation. I was advisor for 2½ years to the Sterling Iron & Railway Company, a road 8 miles in length and also represented a syndicate in building a railroad across Honduras (Tr. 3270). I made the reconnaissance, drew most of the contracts and estimated the various costs, my report being approved by some of the best railroad authorities in the country. I have also studied the operating expenses of narrow gauge roads in the Rocky Mountains, have been Receiver and General Manager and am General Manager of the Gainesville & Northwestern. I have also studied the Transportation Act of 1920 and its application to the establishment of freight rates and the division of rates between trunk lines and short lines, and have prepared two papers on these subjects. I have executed the questionnaire in this case.

[fol. 618] (Said document received in evidence as Exhibit No. 320.) (Tr. 3271.)

The railroad starts from New Holland, Georgia, where it connects with the Southern Railroad and is numbered 5 on Exhibit No. 319, in the State of Georgia. It runs almost north for 34 miles, terminating at Helen, Georgia. It is a standard gauge road, with 60 pound rails, not ballasted,

and has some grades up to 2.6%. At New Holland it connects with the Gainesville & Midland, over whose tracks it operates into Gainesville, a distance of 2 miles, where it uses the Gainesville Midland terminal, at which it interchanges freight with the Gainesville Midland; going north from Gainesville, the road serves 12 stations (Tr. 3272) and handles to and from those stations miscellaneous commodities such as fertilizers, ties, cotton, farm supplies, crushed stone, lumber and some other commodities. One mile north of Clarmont the road connects with the private track of the Piedmont Corporation, which serves the latter's quarries at Chestatee (Tr. 3273). This road is now one mile shorter than it was in 1925. The aggregate population of the territory is estimated roughly at 10,000 which does not include Gainesville. No other road serves the territory and if the road was removed every place on it would be at least the full length of the road from the nearest railroad (Tr. 3274). We estimate that the road serves a population of nearly 10,000 most of whom are off the road itself. This does not include Gainesville or New Holland. Its abandonment would decrease all land values north of Clarmont by 50% and it would probably cause the abandonment of lumber and tannic acid industries. It would at least shut them down until another road was built. The trunk line railroads are drawing approximately 200,000 ties a year from this section. The abandonment would also shut down the operations of the Piedmont Corporation, supplying 500 tons a day of road-building material, and prevent the development of pyrite deposits used for fer- [fol. 619] tilizer and explosives, and would destroy industrial developments aggregating $2,000,000 in addition to loss of the land values (Tr. 3275). The Piedmont Corporation owns all the stock of the railroad and has advanced the funds to keep it going during the last few years. About 40% of its freight receipts is derived from tonnage of the Piedmont Corporation. That Company built trackage on its own right-of way from Clarmont to a connection with the Gainesville & Northwestern just north of Clarmont. The corporation maintains this track but the railroad operates over it. The railroad was built in 1912 to open up a large timber area. It has operated at a loss from its first

year. Only within the last 12 months has it shown any gains which have been insufficient to meet depreciation, taxes and interest (Tr. 3276). The track of the corporation was built in 1918 by the Chestatee Chemical & Pyrites Corporation on the demand of the Government to make the pyrite deposits at Chestatee available. It was ready just a week before the Armistice, after which the demand for pyrite disappeared. The enterprise lay dead until January, 1921, when the Piedmont Corporation took over its assets. That corporation also acquired the stock of the railroad which was losing money in order to insure its operation. The privately owned tracks and the plant at Chestatee would never have been built except for the war time demands of the Government, and while the Piedmont Corporation has been able to improve the operating results of the railroad to some extent, the railroad is not yet profitable (Tr. 3277). Two of its greatest burdens are car hire and inadequate divisions. The railroad requests an equitable method of assessing car hire between short lines and trunk lines, parties to joint haul and contends that the present method is not equitable to short originating or delivering roads. The cost and revenue of an entire haul and [fol. 620] the division of the revenue must be taken into account in assessing car hire. The cost divides itself into terminal charges and line haul charges. The originating and delivering carriers take care of the terminal cost, which include extra switching, free time to shippers and consignees, handling, billing and collections, and in the case of less-than-carload freight the loading, unloading and use of stations, sidings and other facilities (Tr. 3278). Line haul service is furnished by each participating carrier. Rates for joint hauls are supposed to provide compensation for all the service. On our road the practice has been to make divisions by using the local rates as factors to divide the rates, which results in our road receiving no allowance for its extra originating or terminating expense, although it stands the entire car hire expense for the free time allowed shippers and the extra time required for handling. Inbound coal is the only exception. The present divisions are only equitable on two line hauls where both carriers haul the same distance, since both perform a terminal service and divide the expense and revenue equitably.

The greater the distance hauled by one railroad in comparison to the other, the greater the inequity of the line with short haul. Three-line hauls are most inequitable, since the intermediate carrier performs no terminal service and pays almost no per diem but receives under the present system (Tr. 3279) the same allowance as if it had performed a terminal service. This is a hardship upon us and other short lines similarly situated. On two-line hauls our ordinary division is about 42¢ which is less than the cost of the service, while on many three and four line hauls our divisions are as low as 26¢, which does not even pay train operating expense. In both cases we perform the same service, standing the expense of one terminal while the other lines who have cut our division through receiving the [fol. 621] full allowance perform no terminal service. I understand there is no question here as to the compensation to be paid to owners of cars, and there is no suggestion that owners as such give free time on their cars to anyone. There is confusion of thought by mixing ownership with usage of a car. The two functions should be kept distinct, even though owner and user are the same road. It is best to discuss each case in apportioning car hire as if the car was foreign to all of the lines participating in the haul (Tr. 3280). If it was decided that originating or delivering short lines were entitled to reclaim of per diem and the car belongs to the connecting trunk line, it does not mean that the trunk line is giving the use of its car free during the reclaim period, but instead of paying the per diem assessed against it as a participating carrier to a third road as owner, it pays the per diem to itself as owner from its share of the revenue derived from the use of the car in joint haul (Tr. 3281). My contention is that figures cannot be applied actually except on some general principle and I wish to establish the principle (Tr. 3282). The total revenue contains the allowance for the total per diem and it is immaterial to a car owner whether it receives its per diem from revenue received by another road which uses the car or whether it receives the per diem directly from the revenue derived from its own use of the car. In either case it receives its full rental and the only difference is in the manner in which it gets it. We made a careful analysis of our own handling of cars to determine the minimum to which

we could reduce our car hire expense through efficient handling of equipment. Our average per diem per car was $5.60 and the analysis showed that efficient operation should reduce this to about $4 per car with a theoretical minimum of car detention to a little less. The minimum was based on [fol. 622] no bad weather, no bunching and no cancellation of orders by consignees (Tr. 3283). In the last case empty cars are left idle for several days. In the case of stone shipments, a spell of bad weather may shut down the contractors and cause them to hold up shipments which will result in at least 2 days' supply of cars accumulating from connections. We put an improved system of handling cars into operation, and in six months reduced our average per diem to $4 per car, which our studies indicate is 100% practical operation. Any further reduction would cause extra expense which would exceed the saving. It is on the basis the $4 cost is inequitable and excessive, in comparison with our part of the joint rates, that we want a modification of the car hire rules. As a rule, a car of stone from Clarmont to Jacksonville, Florida, will produce gross revenue of $95 on a 50-ton car. We get $21.75 and the connecting line $73.25. Our per diem is $4 or more than 18% of our part of the revenue and the trunk line per diem on a liberal estimate should not exceed $7 or a little over 9% of their share of the revenue. The claim of the trunk lines that they haul the car more miles per dollar than we do is without force (Tr. 3284). On short hauls the trunk lines get the same revenue we do for the same distance. The most profitable freight for carriers is the long haul traffic, in spite of higher rate for the short haul. Also the operating costs of trunk lines are less than on a short line, yet the rates on which the short lines must live are largely determined by trunk line operating costs. That is all I have on the matter of costs. The only relief we are now offered is the application of differentials in rates to points on our lines. Such higher rates do not produce increased revenue; they only decrease revenue as they stop a large part of the traffic movement. The present method of paying the owner of a car on a time basis through the medium of per diem seems to be [fol. 623] fair and reasonable, but its strict application against our road leaves much to be desired (Tr. 3285). A modification in the way of assessment of charges on the

basis of usage instead of time is indicated. The best method of modification would be the use of per diem with reclaim adjusted to fit our case. That would mean a study of our traffic to determine average conditions, and using the $4 per car as a basis determine what proportion of the per diem we ought properly pay and what reclaim we should be allowed to reduce the per diem to the proper basis. The reclaim would be against the connecting carrier and not against the owner of the car. Relative use of cars could be determined on a mileage hauled or revenue received basis. We do not think mileage is as sound, although its use would be most favorable to us. The benefit that a road obtains from a car is the revenue earned and not the miles hauled, so that proportion of revenue earned by each road is the fairest measure of the use of a car by that road. The reclaim method, adjusted against the base per diem calculated on the assumption of efficient operation is the fairest method and under it our line would be relieved only of that amount of per diem that properly belongs against the trunk line connection (Tr. 3286). It would not relieve us of any per diem resulting from inefficient operation. We do not ask this adjustment of per diem in lieu of adjustments in divisions which are urgently required if we are to get a fair share of joint rates. Per diem adjustment is only one element and many others of equally great importance are uncompensated. It is best to adjust the per diem as one item, as it is a cost element common with all carriers. All other items must be considered in determining proper divisions and that determination will be simplified if the per diem question has been previously adjusted. We are not asking for any special reclaim, but want an equitable adjustment [fol. 624] based on conditions and no special favors. We are willing to submit a separate statement showing what reclaim it should be allowed and the facts on which it is based. We particularly ask that we be allowed to make reclaim or free time arrangements with connecting lines without being restricted by rules (Tr. 3287) established by the trunk lines.

Mr. Strayer: On Exhibit 319, the roads which I show as short lines I took from the Commission's classification of Class II and Class III railroads; the roads shown are principally Class II and Class III roads (Tr. 3288).

Cross-examination:

The Witness: 40% or less of our traffic is handled for the Piedmont Corporation which owns the capital stock of the railroad. Since 1925, the percentage of traffic to and from the owning industry has gradually increased. We may get as low as 60 cars or as high as 200 cars a month. The road only owns 2 flat cars which are not interchanged (Tr. 3289). I have no method of determining the total per diem detention on the 117 tank cars shown in Questions 7 and 8 of Exhibit 320. They are mileage cars and the rest of them are per diem cars. The detention of the tank cars does not appear as they go to their owners, and, if held up there, are not on detention. My impression is that the detention on the tank cars is not included in the total days on line at the bottom of the page, but I am not sure of it. They were not included in any computation of average per diem. Our road performs no terminal switching service (Tr. 3290) and has practically no local traffic. I doubt if it runs 50 cars a year. We use foreign equipment for that service. Exhibit 320 shows that in 1925, $3,066 demurrage accrued on traffic of the proprietary industry, but that amount is improperly computed. I do not have the correct figures. The error [fol. 625] arose because of failure to shift cars and because the Receiver had charged demurrage on cars (Tr. 3291) which had either not been delivered or which had not been constructively placed. This is only a bookkeeping account as the proprietary industry has to furnish the money for the deficit. The full amount was collected but now has to be adjusted. I know that the correct amount is less than half of that. In Exhibit 320 we requested $1 per car reclaim (Tr. 3292), but we do not wish to be bound by that now. In 1926 our average detention on foreign equipment was close to 5 days and in 1925 it was something over 8 days. We cleaned our own house first and are not setting up any claim based on an average detention in excess of 4 days. I have nothing definite to suggest now. While we want and need all we can get, we must have the trunk line figures as well as our own to get an equitable basis. We are not asking for this because we need the money. We base our request on the equity of the matter and for that reason we have not stated a specific figure (Tr. 3293). To do that we would have to have a comparison with trunk line figures.

Our claim is that our per diem is an excessive charge against us in proportion to revenue. Where there is more than one intermediate carrier, I think the thing to do is to prorate per diem in proportion to revenue. I don't mean as to rates, but average the conditions on each line. In apportioning the per diem, one intermediate carrier might be properly assessed half a day and another three-quarters of a day on the average (Tr. 3924). That is what I have done in our case. I have set up what we should get if we operate efficiently. If we do not operate efficiently the trunk lines should not take care of it. We should find out how many days each railroad should handle the car under proper operation. We know how many days we should have it. We [fol. 626] should then apply the same efficiency to our trunk line connection, average all our traffic cost and see what their share is, then prorate that on the average basis between us, so we would stand only our fair share of the cost. I do not mean by that that car hire should be divided on the same percentage relationship that the revenue is. I would like to see abrogated the rules which now prevent us from dealing direct with our trunk line connections and a principle established by the Commission on which I can deal with them (Tr. 3295). On a specific haul to Jacksonville I claim that we pay more than our share of the burden and should be allowed a reclaim. It would be impossible to figure every separate haul by itself so that the average conditions on our road should be taken. The traffic is stable and it would not take long to say that on the average we should have a definite amount of reclaim as a general average on all our traffic. Where our connection hauls only the same distance we do, we would not be entitled to reclaim, but generally our connections haul 5 to 10 times as far as we do. It would be satisfactory where they haul it 10 times as far to have a different arrangement than where they haul it 5 times as far. I only suggested the other for simplicity (Tr. 3296). On Jacksonville traffic the total haul is 400 miles and we have 16 miles of it. The particular traffic I had in mind was crushed stone of which we have shipped large quantities into Florida for several years. Our gross revenue was $21.75. That is the illustration I gave. In speaking of terminal cost, I meant the extra locomotive service necessary to place cars for shippers, the free time accorded shippers and consignees, the clerical work of billing and

collections, and the use of sidings and freight stations (Tr. 3297). The locomotive service is performed in placing cars for loading and switching them into trains. The free time is the 2 days allowed under demurrage rules, plus allow- [fol. 627] ances for bad weather. We receive a division on all through rates and bill the shipments from point of origin to destination. Our general office expense runs from $600 to $700 a month (Tr. 3298). If we received our full local rate, 75% of our traffic would stop moving as it is keenly competitive and cannot stand the extra rates. I have no figures on what it costs us to bill freight and divide revenue which we collect over what it would cost if we were not a party to through rates. It is difficult to separate that item. If we were not a party to through rates we would still have the same expense for originating or delivering traffic. I would say that there would be no difference in office expense in operating under joint tariffs or local rates, because we have the same work. The difference is in theoretical revenue, but we tried increasing the rate once and that stopped the traffic (Tr. 3299). During Federal control we were allowed 2 days' free time. I don't know what our rate basis was then. Our earnings on stone range from $12 to $24 a car, depending on the number of lines in the haul. Our divisions range from 26¢ to 47¢ a ton. To some points our division would be as low as 23¢, but we have had no movement to those points. On studying the thing, it seems to me that to meet increased revenue both increased divisions and car hire allowance have to be considered. One part of the settlement can be made more equitably on per diem and part on the division (Tr. 3300). My experience is that traffic departments try to persuade us, about once a month, that we ought to take less divisions than we have. For a while we tried to convince them that we should have more but gave it up. I don't mean by that that our connection is unfriendly to us. I think that they are as friendly as their conditions permit them to be. I imagine that the cost of conducting a division case from start to finish would [fol. 628] run into several millions of dollars before you got through with it (Tr. 3301). I have no idea what it would cost a short line, but it would be considerable. Also the time element is important. Our road is kept alive through advances by various individuals to the extent of about $300,000. If we had proper car hire and divisions the road could get

its operating expenses and keep going without having private individuals finance it.

Examiner Rice: We don't want to get into the question of reasonableness of divisions, but I asked you that for this reason. Some of the short line roads intimate that they cannot afford to go to the Commission on a divisions question. I thought you might have some practical thoughts on that question.

The Witness: On our road, I would guess that about $500 in clerical work would get the material. That would go no further than accumulating the data (Tr. 3302). In the case of one connection, I don't think that my theory with respect to divisions and car hire would have any serious effect. On the other connection it might. Our divisions are now adjusted with our connections on a rate prorate.

F. B. WINSLOW was called as a witness and, being duly sworn, testified as follows:

I am Auditor of the Birmingham Southern Railroad and have been since November, 1907. The road has not been finally valued by the Commission but has been tentatively valued at $3,437,618 as of June 30, 1917 (Tr. 3303). This value has been protested as being too low. There have been substantial changes in the property since that date. That tentative valuation cannot be used as a means of determining the present value of the road's property. That value was also based on 1914 prices, to which we object. The road filed excess income reports with the Commission [fol. 629] in 1925 and 1926, but has paid no excess income. Our claimed valuation in 1925 was $3,899,601 and in 1926 $5,679,513.26 (Tr. 3304). The book value of the total road in 1925 was $948,654.50 and the value in 1926 was $1,390,148.99. The difference between these figures and the value of the property for rate making purposes is explained by the fact that the book value was built up from an old original figure, and we know it is not correct (Tr. 3305). The books show that certain leases referred to by the Commis-

sion in the valuation case were acquired through use for a nominal consideration. The present value of the property for 1926 we figure to be nearly $6,000,000. I have prepared a statement showing gross revenue and net railway operating income of the road for 1925 and 1926.

(Said document received in evidence as Exhibit No. 321.)

In 1925 we had net railway operating income of $136,000 and in 1926 $109,802, but so far this year we are operating at a loss to the extent of $28,000 or $30,000 (Tr. 3306). We have very little hope of overcoming the present deficit during the balance of the year, as the business of the industries has been shut down. This is the first year in which we have shown a deficit, but I don't know what months it refers to. In the same months of 1926 we show a profit.

H. E. PARKER was called as a witness and, being duly sworn, testified as follows:

I am Superintendent of the Birmingham Southern Railroad and have been since 1919. I was in the Operating Department of the Southern from 1908 to 1919. I have a map which correctly shows the Birmingham Southern and its connections in the Birmingham, Alabama, district.

(Said document received in evidence as Exhibit No. 322.)

The total main line mileage of the railroad is about 33 miles. That is the operated mileage. We own approximately 17 miles (Tr. 3308). There has been no change in [fol. 630] the connection between the Birmingham Southern and the Tennessee Coal & Iron Company. The road serves about 45 non-proprietary industries, furnishing a substantial tonnage. It connects the Birmingham, Ensley & Bessemer with the trunk line carriers in the Birmingham district and performs a terminal switching service out of the limits of those stations, for which it receives an allowance of $2.70 a car. We also have a line haul service between these stations, performed for the trunk lines and a local service moving between our stations (Tr. 3309). Foreign cars are used in terminal switching service and are accounted for with respect to rental in accordance with the Birmingham Southern rule. That is also true of terminal

haul service. We use no foreign cars in local service between stations on our line. We own 218 cars and about 2,000 are owned by the industries and they are used in the local service. The road performs practically no intra-plant switching service for the industries, but if it does it uses either the cars of the industry or its own cars (Tr. 3310). The road occasionally performs an intermediate service between stations at Ensley. The Warrior River Terminal Company has trackage rights over our line from Fairfield Junction to Ensley, and our 34th Street yard and to reach the interchange tracks of the trunk lines. That is known as overhead service on traffic transported by water to Birmingham and delivered to connecting carriers for further movement. Those cars are not included in our car hire settlements. I would estimate our average terminal switching haul to be about 1½ miles. For it we receive the switching allowance of $2.70 per car (Tr. 3311). The average haul of the terminal line switching is 7 or 8 miles and for it we receive an allowance of 20¢ a ton out of the rate (Terminal tariff of the Birmingham Southern Railroad re-
[fol. 631] ceived in evidence as Exhibit No. 323). Page 6 of Exhibit 323 refers to the terminal switching which I have discussed. The industries are those to and from which we switch cars for connecting carriers. All except the Tennessee Coal & Iron Company are non-proprietary industries (Tr. 3312). Our cars go out on the lines of the trunk lines. I have prepared a statement showing our cars on connecting lines from September 1, 1926, to August 31, 1927.

(Said document received in evidence as Exhibit No. 324.)

Our road receives no compensation for the use of those cars in switching service. The exhibit is typical of the general situation with respect to our cars on connecting lines (Tr. 3313). On Exhibit 324 all the cars on which no car service or mileage was paid were handled in terminal switching service. Some of our cars are used in line-haul service and for them we receive either per diem or mileage payments. I have prepared a statement showing the number of cars which we handled in terminal switching service.

(Said document received in evidence as Exhibit No. 325.)
(Tr. 3314.)

The exhibit shows that in 1925 we handled 31,324 cars in terminal switching service, with an average detention of 2.3 days per car and 31,304 cars in terminal line-haul service, with an average detention of 4.4 days per car. Those are the days the cars were retained on the Birmingham Southern. None of the cars handled in line-haul service were also handled in terminal service. The other lines allow a reclaim of 3, 4 and 5 days, and I understand the Birmingham Belt has a 5-day reclaim. Under the Birmingham Southern Rules our road has an average free time allowance of about 3 days (Tr. 3315), which begins at 7 A. M. after the car is received. That arrangement includes all cars received from connections. I have prepared a statement showing the charges paid by the road for the use and detention of cars from July 15, 1921 to August 31, 1927.

(Said document received in evidence as Exhibit No. 326.)

[fol. 632] The exhibit shows that in 1925 we paid $13,972 for cars (Tr. 3316). Had we been accorded a per diem reclaim on cars handled in terminal switching service, as shown in Exhibit 325, and had paid per diem in the same period on cars in terminal line haul service, as shown on the same exhibit, the road would have had to pay under the rules $138,249, which was greater than the net income of the road for that year. We charge bad order cars under the Birmingham Southern Rules and pay for them. After we get it we pay demurrage on it until it is returned to the trunk line, although it is held because of circumstances beyond our control (Tr. 3317).

Cross-examination:

The answer to Question 16 filed by this road to the questionnaire issued by the Commission is incorrect when reporting the total charges paid for car detention in 1925. They should be disregarded as the figures in Exhibit 326 are correct. The reclaim of the Birmingham Belt in the Birmingham district has been reduced to 4 days (Tr. 3318). The Central of Georgia, Frisco and Seaboard each receive 4 days, and the Illinois Central, L. & N., Alabama Great Southern and Southern get 3 days each. Those are the terminal switching reclaim periods for the various roads. I presume that they are determined by a check made under

the rules of the American Railway Association. It is probably true, as shown by the questionnaire, that we receive no per diem and no mileage for the use of our cars in 1925. Until recently we did not allow our cars to go out except in emergency. In the last two or three years we have built additional cars which we do allow to go to connecting lines. I don't know what roads allow us per diem and what roads allow us mileage (Tr. 3319). My impression is that our immediate connections allow us mileage, and that some of the roads further away give us per diem. We take what we are allowed without argument, as it did not cover many cars and the amount was insignificant. The amount re- [fol. 633] ceived on cars in line-haul service was very small. All of our 218 cars are not regularly interchanged. Some of our connections said that they were using their cars to protect business originated on our line and destined to within their switching limits, and these cars were provided especially to protect that business (Tr. 3320). We recognize the unfairness of their being required to furnish cars on which they only receive a terminal charge and which did not go out of the Birmingham district. The cars shown in Exhibit 324, on which our connecting lines performing a terminal switching service are loaded on our line by industries and we receive a terminal line haul. Usually it is a line haul service so far as we are concerned. As representative of this movement, we have cars originating within the Fairfield tracks of the Tennessee Company and moving to the L. & N., and it performs a switching service within the switching district on the same car (Tr. 3321). The L. & N. assesses a switching charge, which we absorb under certain conditions. Nothing is done about a reclaim to the L. & N. We do not make a practice of handling foreign cars in local service. We might use such a car once in 6 months or once in a year. I did not make any check to determine whether or not any foreign cars were used in local service during the period covered by Exhibit 325. I know positively it is not a practice and does not usually occur. There may have been half a dozen cars but it does not amount to much (Tr. 3322). We occasionally perform an intermediate switching service between the L. & N. and Ensley, but that is insignificant in volume. We perform very little intra-terminal switching service. The amount of per diem shown on Exhibit 325 that we would have paid

in 1925 would not be slightly increased if we included foreign cars used in local service and foreign cars used in other service. That figure includes all cars that we had [fol. 634] in our possession for the length of time that we had them. It includes cars moved between our line and the connections in terminal line service. There is a bare possibility that some cars might have been loaded in local service but it is already charged in as terminal service (Tr. 3323) and the entire time is charged on that account. The figures shown would include all those things. I don't know whether the detention shown on Exhibit 325 includes Sundays, holidays and all other days, but it is my understanding that it does (Tr. 3324).

Mr. Belsterling: Let it be understood that the days shown are car service days, which means that Sundays and holidays were excluded (Tr. 3325).

The Witness: On Exhibit 326, the figure of 210,015 in the second column is supposed to represent the total days on the Birmingham Southern Railroad, and I presume includes Sundays and holidays. The instructions were that the figures should be made on the per diem basis. It is arrived at by taking all the cars, figuring them on a per diem basis, and deducting the switch movement cars. It was made on the basis of what it would have cost us if we had been on per diem (Tr. 3326). Our charge on switch traffic is $2.70 a car. On all our line-haul traffic we get a division of 20¢ out of the joint rate, regardless of the commodity. Our average load is 40 tons a car and the revenue amounts to $7 or $8 a car. I don't know what proportion of the gross operating revenue shown in Exhibit 321 was derived from freight service (Tr. 3327). We have no passenger service, and it is probably all freight revenue. I think 1925 was a fairly representative year (Tr. 3328). Our business is subject to fluctuation. On Exhibit 326 the figures in the first column are car units. I think they are loads under the demurrage rules. I don't see how we can handle it otherwise. I think that the figures in that first column represent loaded cars interchange and not car. [fol. 635] units.

Examiner Rice: Mr. Belsterling, what does the Birmingham Southern want the Commission to prescribe for that road?

Mr. Belsterling: I think the Birmingham Southern is perfectly willing to be let alone, so far as per diem is concerned (Tr. 3329). If they want to change the rule, they would want the per diem reclaim. If they cannot get it, they want a readjustment of divisions (Tr. 3330).

A. W. Carey was called as a witness and, being duly sworn, testified as follows:

I am Vice President of the Birmingham Southern Railroad and have had considerable experience in traffic matters. We receive $2.70 a car from the trunk lines (Tr. 3332) on all competitive cars switched in terminal switching service. On competitive traffic a charge of $2.70 per car is absorbed by the trunk line. On non-competitive traffic the charge is in addition to the through rate (Tr. 3333). If the Birmingham Southern was placed on a per diem basis instead of on the modified demurrage basis on which it now operates, and the Commission should not allow it a reclaim, we would want, in addition to our switching rate of $2.70, an amount that would represent our per diem reclaim. If we pay $1 a day for the use of a car, we must get it somewhere, and we cannot get it out of the $2.70 rate. I think we could look over our records for a representative period and decide upon an amount which could be added to the present switching charge so that a charge which would cover our operating expenses could stand over a reasonable period without the necessity of change. If this was done and the amount absorbed by the trunk lines was figured in one sum, it would save some labor (Tr. 3334). That, however, would place the burden of car hire on the consignee when switching was not absorbed on non-com- [fol. 636] petitive traffic. We have no situation where the trunk line absorbs part of the switching charge and the rest is collected from the shipper. The railroads have been struggling with the reclaim problem for many years, and I don't see any way to improve what they now have. I see no reason why we should not have a reclaim on our cars (Tr. 3335), as it is the duty of the long haul carrier to furnish cars for the service. It is included in the rate. If we had a division of the through rate on the switching traffic and included the per diem cost on the division, it would raise

haul service. We use no foreign cars in local service between stations on our line. We own 218 cars and about 2,000 are owned by the industries and they are used in the local service. The road performs practically no intra-plant switching service for the industries, but if it does it uses either the cars of the industry or its own cars (Tr. 3310). The road occasionally performs an intermediate service between stations at Ensley. The Warrior River Terminal Company has trackage rights over our line from Fairfield Junction to Ensley, and our 34th Street yard and to reach the interchange tracks of the trunk lines. That is known as overhead service on traffic transported by water to Birmingham and delivered to connecting carriers for further movement. Those cars are not included in our car hire settlements. I would estimate our average terminal switching haul to be about 1½ miles. For it we receive the switching allowance of $2.70 per car (Tr. 3311). The average haul of the terminal line switching is 7 or 8 miles and for it we receive an allowance of 20¢ a ton out of the rate (Terminal tariff of the Birmingham Southern Railroad re-
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(Tr. 3314.)

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Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 69

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, CHICAGO AND NORTH WESTERN RAILWAY COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED MAY 7, 1931

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O. E. Hallberg	976	927
E. T. Kennan	980	930
W. L. Barnes	990	939
G. E. Malone	999	946
Frank M. Gates	1003	949
J. O. Klapp	1006	952
W. Mosby	1007	953
J. E. Murphy	1009	955

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R. L. Sproul	1014	959
Shirley Seward (recalled)	1017	961
Ireland Hampton (recalled)	1019	964
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C. W. Crawford	1032	975
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No. 501—List of subscribers having mileage of less than 100 miles, etc	1064	1033
No. 502—Statement of present method of settlement for use and detention of freight cars, etc.	1065	1039
No. 503—Statement of present method of settlement for car hire with electric lines	1066	1053
No. 504—Summary of steam roads, miles operated, freight cars owned, etc	1067	1066
No. 505—Original and amended forms of per diem rules governing settlement for use of freight cars	1068	1068
No. 506—Circulars No. 26481, etc., of American Railway Ass'n	1069	1069
No. 508—Circular No. 2644 of American Railway Ass'n	1070	1129
No. 509—Summary of replies to circular No. 2644	1071	1131
No. 516—Circular No. 2265 of American Railway Ass'n	1072	1161
No. 517—Comparative statement for year 1925, showing actual payments under Birmingham Southern rules versus settlement that would have accrued under American Ry. Ass'n rules.	1073	1163
No. 518—List of 196 steam railroads who do not subscribe to car service, etc	1074	1164
No. 520—Statement of freight car ownership, class one roads	1075	1167
Exhibit 40—Statement of Southern Ry. System, showing data in connection with freight cars interchanged	1076	1168
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H. E. PARKER, having been previously called as a witness, was recalled and testified:

In 1925 we paid out $13,972 to connecting lines for cars and collected $7,626 in demurrage. In 1926 we paid out $21,610 and collected $14,000 (Tr. 3341).

Mr. Belsterling: I wish to offer in evidence an exhibit for the Benwood & Wheeling Connecting Railway, showing its valuation for the year ending December 31, 1925.

(Said document received in evidence as Exhibit No. 327.)

I also wish to offer in evidence answers to the three questions propounded by Mr. Towner (Tr. 3342).

(Said document received in evidence as Exhibit No. 328.)

Mr. Belsterling: I wish to offer in evidence the financial statement of the McKeesport Connecting Railroad, re-[fol. 638] quested by the Examiner.

(Said document received in evidence as Exhibit No. 329.)

Mr. Belsterling: I wish to offer in evidence the answers on behalf of the McKeesport Connecting Railroad to the three questions propounded by Mr. Towner.

(Said document received in evidence as Exhibit No. 330.) (Tr. 3343.)

JOHN F. SCHENCK was called as a witness and, being duly sworn, testified as follows:

I am President of the Lawndale Railway & Industrial Company. The road operates from Lawndale, North Carolina, 12 miles to Shelby, North Carolina. It is a narrow gauge road, built by the Cleveland Cotton Mills under a special charter. It was constructed as a private railroad to serve the cotton mills. Soon after that, a new corporation was chartered and it purchased the mill from the Cleveland Cotton Mill Company (Tr. 3345), leaving the ownership of the railroad in the original company. The name was then changed to the Lawndale Railway & Industrial Company. The road has been operated as a common carrier for years, serving two cotton mills near Lawndale and

handling general merchandise for the public. Prior to 1922, we did not pay any per diem to the Seaboard Air Line, our connection. In 1922, we were advised by an official of the Seaboard that we would be allowed only one day free time, and would have to pay $1 a day after that for cars into and out of which the goods were transferred. We have received bills each month since then (Tr. 3346) from the Seaboard. Prior to then they charged us nothing. We have not paid the bills, the question being in dispute. We were originally working under a contract which did not refer to any charges such as these, and we protested against paying them until the contract terminated. It said nothing about per diem and was the only contract we had. We handle all our business, local and joint, in our own cars and transfer from our cars to the Seaboard cars. It sometimes takes three of our cars to make one for the Seaboard. [fol. 639] We have no physical connection with the Southern and the freight that we receive from it at Shelby (Tr. 3347) is carted across the town. The Southern pays for the cartage to the Seaboard depot, where we have a joint station. We get onto their track west of Shelby and run to the town station with a third rail. I am speaking of the Seaboard. When we have freight for the Southern, or when the Southern has a car to deliver at Lawndale, it is transferred by the Seaboard, usually at our junction. It will come into Shelby, destined to Lawndale (Tr. 3348). We have no connection with the Southern, so the Southern delivers it to the Seaboard which places it for the Southern at the transfer track. We unload it and transfer it to our cars (Tr. 3349) at our expense. On outbound traffic we also unload and load if it is a carload lot. We do that inbound and outbound at our own expense. The l. c. l. shipments go to the regular station in town and I think it is unloaded by the Seaboard crew. The station at Shelby is joint between us and the Seaboard (Tr. 3350). Our main purpose in appearing here is that we don't want any national rules that would affect our dealings with our own connection. We prefer to settle those matters between ourselves. Since we originate the business, issue the bill of lading and load the cars, we feel that the Seaboard should treat us as well as a merchant at Shelby and should allow us at least 48 hours' free time. We think we should not be charged any per diem or demurrage but should be allowed 3 days' free

time. Our dealings with the Seaboard have been pleasant and satisfactory, and since we bear all the expense of the transfer and are obliged under the contract to make physical connection with their line, we think the Seaboard will be willing to grant us the free time we desire and be glad to do it. Our line in North Carolina is No. 20 on Exhibit [fol. 640] 319 (Tr. 3351). Our line is narrow gauge, and we have a transfer platform about 9 feet wide. Cars for us to load are placed at this platform and we load with our own force and transfer at our own expense carload shipments to the Seaboard cars. We do the transferring. Prior to 1922 the question of per diem was not raised. They then notified us that they would give us one day free time and charge us $1 a day thereafter, and sent us bills which we have not paid (Tr. 332). We have no physical connection with the Southern, which trucks free across town at its own expense. We have never had a bill from the Southern for per diem. We wish to be left free to deal with the Seaboard, as I think that is a matter between us. I did not bring the contract that I spoke of. It was made about 10 years ago and provides that we agree to connect physically only with the Seaboard during a certain term (Tr. 3353). They in turn give us a certain percentage or prorate on goods hauled through their gateways. We share in the revenue on inbound and outbound freight. I am not sure how much longer the contract has to run yet. It was made about 8 years ago and I think will expire within two years. I don't know what our revenue amounts to in dollars per car (Tr. 3354). I would say most of the traffic is cotton or cotton products, although we haul a great deal of fertilizer. We were not paying per diem when the contract was made and the per diem was a surprise to us, as it had not been suggested before. The contract has been in effect more than 5 years. I mentioned that we wanted 48 hours' free time. Wagons are entitled to that much and we act a good deal like a wagon train. I would really like to have 3 days' free time (Tr. 3355). I think the per diem charged against us is computed under the per diem rules, starting at midnight. Our road is a common carrier of freight and files reports and tariffs with the Commission. [fol. 641] I don't think the contract provides that we shall transfer freight in both directions at our own expense. It is only implied as a custom. On outbound traffic we issue

	Original	Print
Testimony of R. F. Watts	1010	[illegible]
A. T. Towmaster	1012	[illegible]
R. L. Sprout	1014	[illegible]
Shirley Seward (recalled)	1017	[illegible]
Ireland Hampton (recalled)	1019	[illegible]
Donald S. Payson	1020	[illegible]
Narrative statement of evidence before I. C. C., No. 16420	1024	[illegible]
Testimony of C. H. Cheney	1024	[illegible]
James E. Rowland	1031	[illegible]
C. W. Crawford	1032	[illegible]
Moultrie Hitt	1048	[illegible]
Testimony of C. R. Wright	1057	[illegible]
Exhibits before I. C. C., Docket No. 17801	1062	[illegible]
No. 11—List of subscribers to car service and per diem agreement, March 1, 1927	1062	[illegible]
No. 16—Circular C. S. 39 of Railroad Administration	1063	[illegible]
No. 501—List of subscribers having mileage of less than 100 miles, etc.	1064	[illegible]
No. 502—Statement of present method of settlement for use and detention of freight cars, etc.	1065	[illegible]
No. 503—Statement of present method of settlement for car hire with electric lines	1066	[illegible]
No. 504—Summary of steam roads, miles operated, freight cars owned, etc.	1067	[illegible]
No. 505—Original and amended forms of per diem rules governing settlement for use of freight cars	1068	[illegible]
No. 506—Circulars No. 26481, etc., of American Railway Ass'n	1069	[illegible]
No. 508—Circular No. 2644 of American Railway Ass'n	1070	[illegible]
No. 509—Summary of replies to circular No. 2644	1071	[illegible]
No. 516—Circular No. 2265 of American Railway Ass'n	1072	[illegible]
No. 517—Comparative statement for year 1925, showing actual payments under Birmingham Southern rules versus settlement that would have accrued under American Ry. Ass'n rules	1073	[illegible]
No. 518—List of 196 steam railroads who do not subscribe to car service, etc.	1074	[illegible]
No. 520—Statement of freight car ownership, class one roads	1075	[illegible]
Exhibit 40—Statement of Southern Ry. System, showing data in connection with freight cars interchanged	1076	[illegible]
Findings of fact and conclusions of law	1078	[illegible]
Final decree	1085	1174
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the rate to the man who is getting freight which is not competitive.

Cross-examination:

All the group rates applying to the district are not the same. The only difference on non-competitive traffic lies in the failure of the trunk line to absorb the switching, but the rate on lumber, for example (Tr. 3336), from one division of the L. & N. is not the same to all points in the Birmingham district. Also the rates are not the same on local traffic and there is a good deal of a movement of that class of traffic to various points in the district. On local traffic originating on the Birmingham Southern, where it gets a line haul and where the trunk line performs a terminal switching service, the Birmingham Southern furnishes its own cars and charges no per diem to the connecting line. If the connecting carrier paid per diem, it would not mean an increase in the rates if he found a way to pass it on. All he has to charge is the regular switching rate (Tr. 3337). I don't see how the trunk line could pass the charge on to anybody else. If the car was on the line of the L. & N., for example, for 4 days in terminal switching service, it would have to pay $4 to the Birmingham Southern. We would then have to increase our allowance to the L. & N. by [fol. 637] $4 to produce the situation that is now produced. The situation would be the same on traffic in the reverse direction (Tr. 3338). No difficulty ought to arise on our road in connection with mileage cars, as we don't handle them. When traffic originates on our line, we sometimes bill it through and sometimes we do not bill it through (Tr. 3339). On traffic handled by us in terminal switching the trunk line pays us the switching charge, adds it to the freight bill and collects from the consignee. There is no destination on this traffic. Bills of lading are issued on cars handled in terminal line haul service. So far as switching is concerned, per diem reclaim is the simplest way to handle it that I can think of and the one that does substantial justice. If our road pays $1 a day to the owner of the car, we must be compensated for the reasonable time it takes to handle the car (Tr. 3340). I don't think it would be practicable to put the whole thing in one charge, absorb it all at once and save the reclaim checkings, and do substantial justice to anybody.

but I have forgotten the figure (Tr. 3367). We have no average agreement with the mines we serve. We charge them demurrage on box cars but not on coal cars. I appear here because I was requested by the Short Line Association to appear and make a statement. I would have appeared anyway. My reason is that I think the per diem question should be remedied as the short lines are on a wrong basis. I do not speak for all the short lines because ours has its own troubles and its own special reasons for asking an adjustment (Tr. 3368). I think the time basis on our road is wrong, as we are solely a coal road. We want to be in a position to deal with our connections and perhaps make a better arrangement on per diem. I am not prepared to say what I want as that is a question to be discussed between our road and the Southern. I understand the Southern cannot do that now, as it is a member of the American Railway Association and are abiding by the rules [fol. 644] which prohibit any variation from the $1 per diem. The Tennessee is not a member of the Per Diem Agreement and has never had any concessions as long as I have been there (Tr. 3369). I have been there about 5 years and during that time we have paid $1 a day per diem. 75% of our coal goes south of Oneida. We furnish about 20,000 tons a month of fuel coal to the Southern and, of course, pay per diem on the cars in which this coal is handled. I was not appointed by the Short Line Association on a committee to deal with the A. R. A.

Cross-examination:

At the present time our railroad serves 11 mines which are in operation. 5 years ago (Tr. 3370) 29 mines were in operation but the little fellows went to the wall and we now have only 11 mines on the railroad. I don't think the dead mines will ever open up again. None of the mines are interested in the railroad stock which is all held by outsiders. We have 3 flat cars and about 4 gondolas, used principally in handling our own material. They are not used in interchange business. We have no local coal traffic, and you might say there are no towns (Tr. 3371). In 1926, out of 13,242 outbound cars 11,618 were coal. We have no local traffic to amount to anything. Of the outbound tonnage 6,373 cars were commercial coal, 5,246 cars were fuel coal from the Southern, and 1,623 cars were miscellaneous. The road

is on a straight per diem basis with the Southern and pays $1 a day for each day cars are on its rails. We have subscribed to the National Demurrage Rules since September of this year (Tr. 3372). I don't think that carried with it the car service rules. We have not applied the car service or car distribution rules strictly. Our average haul on coal is 33 miles and the furthest mine from Oneida is 45 miles. The Southern rates the mines and we have nothing to do with it. When the mines require equipment they order it of us. The Southern Railway has a rating committee. The [fol. 645] committee rates the mines and then our rating is fixed by the mine rate, although they do not distribute cars to the mines. For instance, if our mines are rated at a total of 70 cars they deliver us 70 cars and we make the distribution as the Southern will not be responsible for the distribution to the mines although the rating is based upon their investigation (Tr. 3373). The mines are on our railroad, but we have not collected any demurrage as I understand the rules do not permit it. I understand no demurrage is collected on coal equipment held for billing on mine sidings. Some demurrage has accrued on coal held on our railroad. We have some outstanding bills amounting to more than $2,000 which we have been unable to collect. We set up demurrage under those circumstances. I don't know what the demurrage accruals were in 1926 (Tr. 3374). Part of the $2,000 accrued in that year. I would say that about $800 demurrage accrued in 1926, practically all of it on interline business. We get divisions of rates on coal, and have always had what you might say was a through rate of which we got a division. It applies on all of the outbound coal. Our mines take what is known as the group rate. The figure of net revenue in 1926 that I gave is net railway operating income after taxes (Tr. 3375). After we got through operating the railroad and paying all the bills we had $23,000 left. Going out on our line from Oneida there is a grade that runs about 1% for a mile, and then there is a down grade of over 3 miles. At the greatest point that grade is 5.1%, and it is about 3 miles in length having two very severe curves. From the bottom of that grade back to the mines, the road is more level. From 9 or 10 miles out of Oneida up to Stanley Junction, 4 miles, there is a grade of about 5 miles (Tr. 3376) which is 1% part of the way. Stanley Junction is 4 miles from Oneida at the bottom of the

grade. Our first track mileage is 45 miles and we have [fol. 646] branch lines that aggregate 25 miles, or a total of 70 miles. The $800 which accrued in 1926 all accrued on no bill coal, which had been loaded and was on the railroad waiting for bills (Tr. 3377). We do not assess demurrage on coal if it is on mine tracks. Our line connects with the C. N. O. & T. P. branch of the Southern Railway. Our mines produce all soft coal. Our revenue from passenger business is included in our gross revenue of $390,000 which I gave and runs about $12,000 a year. I don't know what our net railway operating income was in 1925. It use- to be in red figures. In 1923 we had red figures (Tr. 3378). I think in that year we were in red to the amount of $13,000 to $15,000. Our inbound traffic will run from 8 to 10 cars a month, of various commodities. Our per diem in 1926 amounted to $32,540 and we interchanged 13,242 outbound shipments. We also handled 121 inbound carloads and 771 local carloads (Tr. 3379). The local cars originated at Oneida on our road and about 50% of it came in there on the Southern. It is re-worked at Oneida and part of it goes out on our line and part on another short line called the Oneida & Western. As a rule most cars which handle l. c. l. freight inbound are reloaded outbound, but sometimes they go empty (Tr. 3380). We can get our total interchange in loads in 1926 by adding 771 and 121 to 13,242. Our average detention was $2.45 per car. In 1926 and 1927 our mines ran from 3 days to 12 and 14 days on no bill coal held on their tracks. We have 9 locomotives. Our heavy locomotive which can pull . cars has a tractive power of about 34,000 pounds. We perform no terminal switching at Oneida, except that we switch out empties from the Southern Railway tracks and take them to our mines. (Tr. 3381). The Southern brings in 50 or 60 empties and will place them in their own yards, as we have no yard tracks to speak of. They have 4 tracks to which we go and switch the empties [fol. 647] and to which we make deliveries. The cars are interchanged inbound on the date we take them off the track. They place the cars and when we want them we go and get them. On coal our carload revenue is about $17.50 a car. It differs on shipments to different destinations. On traffic to the West and north of the Ohio River the revenue is so thin that we don't care for the business, as we lose money on it. We can't handle a car of coal and get from $8 to $9.50

out of it. It does not pay our operating expenses and our per diem bill. (Tr. 3382). The rates to that territory are pretty low and some of that traffic runs as low as $8 or $9 per car. That is not a large proportion of our traffic. Our mines are all non-union. I have been told that we have always been on a straight per diem basis of car hire, but during the War I think they were on a different basis. The car hire was very light. Personally, I don't know what the arrangement was during Federal control (Tr. 3383). In this case we want the privilege of dealing with our connections on car hire and don't want anything else. We want to be at liberty to negotiate with the Southern, our only connection, with which we have the friendliest relations. Our road runs 45 miles from Oneida to Fork Mountain. It branches off at Stanley Junction and goes about 4 miles where there are 3 mines. There is no town (Tr. 3384). We also have a branch line from Smokey Junction about 3 miles long, which runs to Haywood. We also have a line that runs 6 miles from Beech Fork into the timber lands. There is also considerable coal there. Those are all the branches. I find that during Federal control, from January 1, 1918 to May 1, 1919, the per diem was figured with 48 hours' free time (Tr. 3385). That is from January 1, 1918 to September 30, 1920. We paid per diem, after that free time. Since January, 1921 we have paid straight per diem. The book value of our railroad in 1925 was $1,583,332.59. The Commission has valued our railroad. Our net earnings in 1926 were [fol. 648] $23,000.00 or about 2½% on our investment. (Tr. 3386).

L. B. Woodward was called as a witness and, being duly sworn, testified as follows:

I am General Manager of the Buffalo, Union & Carolina Railroad. We have filed an answer to the questionnaire.

(Said document received in evidence as Exhibit No. 331.)

Our road is shown as No. 15 in South Carolina, on Exhibit 319. It was known as the Union & Glen Springs Railroad at the time this map was made (Tr. 3387). It is in the northern section of South Carolina. The road connects

with the Southern Railway at Union, from which it operates 3.2 miles west to Buffalo, where there is a stub-end. It operates also from Union 16 miles southeast to Pride, where it connects with the Seaboard Air Line. We interchange with both connections, but the majority of our tonnage is interchanged with the Seaboard. The road is owned by the Union Buffalo Mills Company, manufacturers of cotton goods, through stock owners. It has plants at Union and Buffalo, both served by the road. About 45% of our freight tonnage is for these two mills. Our principal outbound tonnage is cotton goods and inbound is cotton, coal, fuel, oil, merchandise and miscellaneous commodities. The road is not a subscriber to the Car Service and Per Diem Agreement (Tr. 3388). Since May 1, 1920, we have settled direct with our two connections on all foreign cars received from them, on the basis of per diem of $1 per day, without free time. The per diem applies on cars which we switch on a charge of $2.25 per car, as well as to line-haul traffic. Question 10 on Exhibit 331 shows that in 1926 we received $396 in switching revenue at $2.25 a car, and paid per diem of $435 on the same cars, comprising 28 outbound loads and 148 inbound loads. On these 176 cars we received revenue of $2.25 a car and paid almost $2.50 a car in per diem without reclaim. Every car was handled at loss of 25¢ per [fol. 649] car without any consideration of operating expense. We are glad we do not have more of these cars to handle. Our straight per diem applies to cars which we switch on a switching charge, as well as to line haul traffic (Tr. 3389). The road is a member of the American Railway Association, and we understand that if the Association was so inclined we could get reclaim, but we would have to make daily and monthly reports to different car owners throughout the country which would entail a lot of work and expense which we are not prepared to handle. We feel that the reclaim would not justify us because of the additional expense. The amount of money we would gain would not pay for the extra cost (Tr. 3390). We lost money in 1925 on our switching and the reclaim would not pay us for the extra cost. We would like to have the right of dealing direct with our connections, or if we can't do that we would like to have reclaim on our switching traffic and an allowance of 2 days' free time. I mean 2 days' free time on all traffic. We have not approached our connections for

a modification of the straight per diem, since I have had charge of the property, because of the pendency of this case. I have been with the road since 1925 (Tr. 3391). The records show that from 1915 to May, 1920, we were on a demurrage basis of straight demurrage, each car being dealt with separately. I don't know why that basis was cancelled in May, 1920. I have prepared a statement showing the relation of revenues and expenses for the 10 years 1917 to 1926, inclusive (Tr. 3392).

(Said document received in evidence as Exhibit No. 332).

I have also prepared a statement for each month of 1925 and 1926 and the first 8 months of 1927, showing data relative to the number of cars handled monthly and the average detention per car each month.

(Said document received in evidence as Exhibit No. 333.) (Tr. 3393.)

Cross-examination:

On Exhibit 331 I have not included in the total days' de-
[fol. 650] tention any cars handled on a mileage basis. I have only included detention on per diem cars (Tr. 3394). Exhibit 333 shows our average detention in 1925 as 2.8 days. The reason the detention shown in Exhibit 331 in that year is higher is because I think I included the total number of cars. The 2.8 days shown in Exhibit 333 is right and does not include privately owned cars. (Tr. 3395). In Exhibit 331 the 28 cars which originated on our line and were handled in terminal switching service, were cars that we originate and give to the Southern. The only service we perform is the terminal switching. We had 28 of those cars. I did not use the figure of 2.8 days, shown in Exhibit 233, in figuring the per diem. I think I got the actual figures on the 1925 report, but I don't recall (Tr. 3396). I have apparently used the actual figure that we paid on the cars. The $7,926, shown on the last page, I think is the amount of per diem we paid in 1925. The figures showing the number of days on line includes all cars subject to the per diem shown, so that in the answer to Question 10 we used the detention that actually accrued. Our local traffic is negligible and we also have some l. c. l. traffic (Tr. 3397). I don't know what we had in 1925 or 1926. Whatever was han-

dled by us was handled in foreign line equipment, as we own no equipment. We want free time on cars that come to us loaded. When cars come to us loaded we ordinarily load the car out (Tr. 3398). If we use in local service a car which comes to us loaded, we would expect to pay per diem on it. We want 2 days' free time per car on each load interchanged and the right to make whatever arrangement is satisfactory with o-r connections. The expenses shown on Exhibit 332 do not include taxes, hire of equipment or interest. Hire of equipment is shown, but the taxes and interest are not shown. We interchange most of our tonnage with the Seaboard Air Line because the Southern Railway comes into Union itself (Tr. 3399). We would not participate in the haul on a shipment to Union [fol. 651] over the Southern. If it moves to Buffalo we would interchange with the Southern. I don't know how much free time we received during Federal control when our road was on a demurrage basis. The switching on which we lose money is performed at Union (Tr. 3400) where we connect with the Southern. We have not asked them to increase the switching charge. They absorb it on competitive traffic but not on non-competitive traffic. The same rate applies in both cases. We have not asked for increased charges because we were awaiting the result of this hearing. The charges are published in our own tariff and an increase in them is not dependent upon the consent of the Southern but we would have to handle it with the Commission. We might increase our charges without the consent of the Southern (Tr. 3401), but that would not mean that they would increase theirs to us. The Southern also switches for us at Union and receives $2.25. I understand that charge is the charge published by the South Carolina Railroad Commission, and also by the Interstate Commerce Commission. Cars originated by us and delivered to the Southern for switching will be in a foreign car and may be loaded in any car that we have at the time (Tr. 3402). At the present time we both receive a switching charge of $2.25 and pay our own per diem. They probably lose money on it as they have to perform the service the same as we do. There is not a large volume of it and in a ten-year period I think it would run about even between us. Most of the traffic that we originate is routed by the shippers on our road. Both our connections solicit this

traffic at Union (Tr. 3403) in order to get the routing. The population of Union is about 10,000. It is also served by the Southern. We also have Buffalo on our line with about 3,500 population and the outlying country including 8,000 or 10,000. We connect with the Seaboard at Pride, from which the railroad runs to Union, a distance of 16 [fol. 652] miles. We then run on from Union to Buffalo, a distance of 3.2 miles, making a total of 19.2 miles (Tr. 3404). I don't think it would be practical for us to get additional revenue by asking our connections for an increased division. This year our revenue might be $100,000 and the next year it might be $70,000 on the same number of cars. I do not handle the traffic on our road and have no authority over it. I am not familiar with the traffic and have no authority over the Traffic Department (Tr. 3405). I think it would be preferable to handle it this way and get some return on the cars, in preference to asking for increased divisions. That is my opinion. I have no definite idea of the additional cost we would incur to make reports to car owners all over the country. We would need one additional clerk, but I don't know what we could get a clerk for (Tr. 3406). It might be $100 a month and that would wipe out our reclaim. We apply the National Demurrage Rules and the standard rates. Exhibit 331 shows that in 1925 we collected $423 demurrage. Our road operates through approximately level country (Tr. 3407).

C. P. Gordon was called as a witness and, being duly sworn, testified as follows:

I am General Freight Agent of the Ware Shoals Railroad. It operates out of Ware Shoals, a stub-end 5 miles southwest to a connection with the Southern Railway and Piedmont & Northern Railroad at Shoals Junction. We have no intermediate stations and all traffic originates at or is destined to Ware Shoals. We have no local traffic. All our traffic is interline to or from our connections. 75% of it is inbound and 25% outbound at Ware Shoals, which is a town of 6,000 people. We serve principally the Ware Shoals Manufacturing Company (Tr. 3409) and the general community, an area of about forty square miles. The

[fol. 653] stockholders of a manufacturing company own all the capital stock of the railroad. In 1926 our gross revenue was $67,365.78, of which $62,098.54 accrued from freight and the balance from pasenger traffic, mail, express, telegrams and $345 demurrage. Our expenses were $61,551.28, leaving net revenue of $5,814.50. Our net income was $210. We paid our connections $333 in car hire. Exhibit 12 is not exactly correct in stating our basis of car hire. We have the same arrangement with both connections. On a car loaded in one direction and empty in the other direction, we get 72 hours' free time (Tr. 3410). On a car loaded in both directions, we get 120 hours' free time. After free time we pay the regular demurrage rates of $2 a day for the first 4 days and $5 a day thereafter. There is no averaging of debits and credits. We are a party to the National Demurrage Rules and extend the straight demurrage basis to our shippers and consignees. We collected more in demurrage in 1926 than we paid in car hire because we sometimes receive a car at 7 P. M. and notify the consignee before 7 A. M. the next day, which enables us to collect one day's demurrage if the car is not released on the second day. This does not happen frequently. The discrepancy is only $12 and we handled 4,500 cars in 1926. Our present basis of car hire has been in effect since 1908 when the road was first built (Tr. 3411). Neither connection has ever attempted to cancel or modify it. In 1926 we handled about 4,500 cars, at an average detention of about 2½ days a car. On straight per diem our per diem cost would have been about $11,250 or approximately 18.14% of our gross freight revenue. With 2 days free time and $1 a day thereafter, it would be about $4,500. If we had the demurrage rate after 2 days' free time and paid one day demurrage, the cost would be around $9,000 (Tr. 3412). We get 120 hours' free time if a car is loaded both ways, so that the $4,500 and $9,000 are approximate figures. [fol. 654] The railroad was originally built by the Ware Shoals Manufacturing Company as a side track from Shoals Junction, on the main line of the Southern to a point within one mile of Ware Shoals, to which freight was hauled by vehicles to Ware Shoals. The line was then extended to Ware Shoals, and we were advised that we were a common carrier by the Railroad Commission of South

Carolina. The road was taken over by the Railroad Company in July, 1908 (Tr. 3413). Most of our tonnage is inbound and consists of coal, cotton, general merchandise, etc. Our outbound tonnage is principally cotton piece goods products. Mileage cars handled by us are on the same demurrage basis of car hire as per diem cars. We have no complaint of our present arrangement and are thoroughly satisfied. So far as we know both of our connections are satisfied, as neither of them have raised any question about the fairness of the basis. We understand that the American Railway Association is endeavoring to cancel all such arrangements under Paragraph "B" of Rule 6 of the Per Diem Rules, to which we object. We ask that the Commission order the abrogation of the Rule and that our present arrangement be left undisturbed (Tr. 3414). We feel that our present situation is fair to our trunk line connections and to ourselves. If any change is made it would be unfair to either one or both of us.

Cross-examination:

The road was originally built as private track to serve the manufacturing company. They built the track to haul the material and machines and then built the mill, but it was used by the Manufacturing Company for 3 or 4 years, and the only reason it was changed was because of advice we received from the South Carolina Railroad Commission (Tr. 3415). In 1926 about 95% of our tonnage was for account of the Manufacturing Company, and if it was not located there, there would be no justification for continuing the railroad. We own no equipment or engines but lease an engine from the Southern Railway. Before the road was incorporated, the Southern furnished an engine, [fol. 655] but I don't know whether or not the mill paid for it. I am not sure that the same arrangement obtains now. The Southern has not operated over the track into the plant of the Manufacturing Company, since it has been a railroad. I don't know what they did before that (Tr. 3416). So far as I know, the operation has always been the same as it is now. We handled approximately 4,500 loaded cars in 1926 and our freight revenues were $62,098.54. 90% of our revenue is derived from a division of through rates and we collect the balance under a local rate between Ware

a modification of the straight per diem, since I have had charge of the property, because of the pendency of this case. I have been with the road since 1925 (Tr. 3391). The records show that from 1915 to May, 1920, we were on a demurrage basis of straight demurrage, each car being dealt with separately. I don't know why that basis was cancelled in May, 1920. I have prepared a statement showing the relation of revenues and expenses for the 10 years 1917 to 1926, inclusive (Tr. 3392).

(Said document received in evidence as Exhibit No. 332.)

I have also prepared a statement for each month of 1925 and 1926 and the first 8 months of 1927, showing data relative to the number of cars handled monthly and the average detention per car each month.

(Said document received in evidence as Exhibit No. 333.) (Tr. 3393.)

Cross-examination:

On Exhibit 331 I have not included in the total days' de- [fol. 650] tention any cars handled on a mileage basis. I have only included detention on per diem cars (Tr. 3394). Exhibit 333 shows our average detention in 1925 as 2.8 days. The reason the detention shown in Exhibit 331 in that year is higher is because I think I included the total number of cars. The 2.8 days shown in Exhibit 333 is right and does not include privately owned cars. (Tr. 3395). In Exhibit 331 the 28 cars which originated on our line and were handled in terminal switching service, were cars that we originate and give to the Southern. The only service we perform is the terminal switching. We had 28 of those cars. I did not use the figure of 2.8 days, shown in Exhibit 233, in figuring the per diem. I think I got the actual figures on the 1925 report, but I don't recall (Tr. 3396). I have apparently used the actual figure [illegible] we paid on the cars. The $7,926, shown on the last page, I think is the amount of per diem we paid in 1925. The figures showing the number of days on line includes all cars subject to the per diem shown, so that in the answer to Question 10 we used the detention that actually accrued. Our local traffic is negligible and we also have some l. c. l. traffic (Tr. 3397). I don't know what we had in 1925 or 1926. Whatever was han-

the bill of lading (Tr. 3356). The country we serve is thickly populated and is very flourishing. I would say we serve as many as 10,000 people, although it is hard to say, but there is no railroad north of us closer than Morganton. No cars of the Southern or Seaboard go on our rails. Our road is located in Cleveland County, North Carolina. I should think that our railroad would be missed if it was to disappear, as it is necessary for the cotton mill business and other industries would also suffer (Tr. 3357). It is not a nuisance to the industries as they don't have to bear the expense of running it. If the road was not there, the industries would have to haul their products over the roads. This would be difficult with fertilizer, as it comes in bulk and is needed in a hurry in the spring. We can't haul it as fast as it comes in. That would be a serious proposition to the people who depend on fertilizer to a great extent. We handled about 500 cars during the year and about half of that was fertilizer. Each car amounts to about 3 of our narrow gauge cars (Tr. 3358.) The Cleveland cotton mill has about 6,000 spindles and the other a little over 3,000. The mills consume about 500 bales of cotton a year. The railroad was built because the mills could not get their product to the Seaboard at anywhere near the cost they do now. Another serious matter would be the matter of coal. There is a large dye house, (Tr. 3359) which takes a lot of coal and could not be hauled in trucks. That coal is run up on a coal chute by the Seaboard and dumped down onto our platform and we transfer it by shovel into our own cars. Our road is operated by steam and we have two locomotives and about 24 freight cars. We have no demurrage tariff and we would hardly know how to collect demurrage on small cars. We would [fol. 642] not know what to charge (Tr. 3360). We don't penalize our shippers at all but get very nice results from them, as they act fair with us. 1926 was the most favorable year we have had in a good while. Our gross operating income was $2,391. That is the net profit of the railroad (Tr. 3361). In 1926 our net railway operating revenue was $22,015.70, and in 1925 was $22,116.40. In 1926, our net revenue from railway operation was $2,856.30 and in 1925 was $500.23. In 1926, our net railway operating income was $2,391.74, and in 1925 was $64.82. In 1924, it was $1,197.87, in 1923 1,144.01 and in 1922 $1,273.14. Our

road is about 12 miles long. I don't know what the per diem bills rendered by the Seaboard amount to since 1922 (Tr. 3362).

L. E. SMITH was called as a witness and, being duly sworn, testified as follows:

I am General Manager of the Tennessee Railroad (Tr. 3363). It starts from Oneida, Tennessee, where it connects with the Southern Railway. The main line runs southeast for 45 miles, and we have branch lines aggregating 25 miles, making a total of about 70 miles. The traffic is almost entirely coal, although there is some lumber. We have no inbound freight which amounts to anything. It will run about 8 to 10 carloads a month. The l. c. l. shipments run about 65 cars a month. They come on the Southern and we transfer them at Oneida (Tr. 3364). About half of it originates at Oneida. Our road is standard gauge. The l. c. l. traffic comes to Oneida. Part of it is for the town and the part for us we transfer into another car. Our principal commodity is coal. The road follows a creek for 10 miles from Oneida. It then strikes and follows a river up to Fork Mountain. The grade down from the mountain to within 4 miles from Oneida is easy, although there is one grade of about 1%, 8 miles out of Stanley Junction, which [fol. 643] is about 4 miles from Oneida. At the junction the entire train is set out with the exception of two cars, which with a caboose are pulled by the road inbound into town over a grade (Tr. 3365) which runs as high as 5.1%. The loads are accummulated at the Junction on storage tracks and in the afternoon put on a heavier engine and haul the cars into Oneida. It can haul 4 cars at a time. 16 cars are hauled up to a side track just out of Oneida and those 16 cars are then taken into town and delivered to the Southern Railway at Oneida. By the time the last trip is made on the 16 cars, the engine has to go to town for water. When we have 65 to 90 cars as we frequently have, it requires an extra effort to get them up the hill and deliver them to the Southern during the night (Tr. 3366). In 1926 we paid $32,540 in per diem to the Southern out of gross revenue of $390,253. Our net revenue in 1926 was $23,000. The road was valued by the Commission as of June 30, 1918,

Shoals and the junction. That has been so for sometime. The road is a party to the National Car Demurrage Rules. I stated that average detention in 1926 was 2½ or 3 days on a- average of one or two months (Tr. 3417). I gave the figure of 2½ traffic days, but I don't know that it would be correct for the entire year. I took 2 months in 1927. The figures I gave with respect to demurrage collections, revenue, etc. were for 1926. To get the $11,250 car hire, I said I would have to pay, I multiplied the 4500 by 2½. All our traffic is handled in foreign line equipment. I think our connections should furnish the equipment in addition to paying us for our service in hauling the traffic (Tr. 3418). Usually our demurrage collections are about the same as our car hire, and I think that is all right. I have no income statement for 1925. All our traffic is interline. Our entire mileage is 5 miles. We make annual reports and file tariffs with the Interstate Commerce Commission. Our contract with our connections allows 72 hours' free. We must return cars within 72 hours (Tr. 3419). We receive a car at 11 A. M. or 7 P. M. and return it on the fourth morning or afternoon but not at the same hour. That is all that is in the contract pertaining to car hire. Our net income in 1926, after deducting taxes, interest, car hire and the amount turned over to the Manufacturing Company under an agreement with them was $210. Our net railway operating income in that year was $5,164.91. Our book value was [fol. 656] $70,000, I think (Tr. 3420). We pay nothing for the locomotive which we lease from the Southern. Our connection with the Piedmont & Northern is competitive on traffic controlled by other people. 90% of our interline traffic is interchanged with the Southern. We operate the locomotive, pay the expense of a crew and fuel, but the Southern keeps the track and locomotive in shape (Tr. 3421). That is a written agreement. If the Commission should require the payment of straight per diem by non-subscribers, it would leave us in the hole. We prefer to stay as we are. If we were put on per diem, I don't know whether we could operate or not, as I don't know whether the Manufacturing Company would assume the loss. We probably could ask for an increase in divisions but that would be up to the main line to give it. I am a traffic man (Tr. 3422). We get divisions on practically all traffic handled under a through rate and our divisions are very low.

It depends on whether our connection would want to add that to the through rate. If they did, it would put our mill out of line and it could not meet the competition. It manufactures cotton piece goods and cotton and cotton products constitute the principal traffic handled by the Railroad (Tr. 3423). The country we operate through is very hilly (Tr. 3424) with heavy grades. About 90% of our traffic is handled for the mill (Tr. 3425). The arrangement has always been that mileage cars are on a demurrage basis. We operate two round-trips daily with mixed trains. The train goes down and back in the morning and again in the afternoon. Since I have been with the road we have come out about even on car hire. We made $12 on it last year. The Manufacturing Company is a large concern (Tr. 3426). The contract with the Southern gives practically all of its business to the Southern. The car hire and the engine are in consideration of the understanding that we will [fol. 657] give the Southern all our business. They get the business and give us the cars and engine for nothing (Tr. 3427). I think it is all right to handle these cars to the Southern. The last three months we have been billing traffic from the mill to destination; before that we did not do it. When our train gets to the Junction their train is waiting, and to then bill the shipments would delay the cars. We are now billing it for our benefit as well as theirs. Prior to the last three months we billed the traffic to Shoals Junction, issuing waybills just like a big road. We issue through bills of lading on our road (Tr. 3428). It is more trouble to make the through billing now than to make the local billing we formerly made. I think that $50 a month, representing clerk hire, would cover the difference in cost. We pay for our tariffs but that does not amount to much (Tr. 3429). Somebody has to be familiar with the tariffs. I would say that our agent has to be above the average. Shipments are billed with a through rate. Some of them are wrong and have to be corrected. Our road is furnished with a free copy of every tariff, where it is an agency tariff, and we don't need more than two copies at most. That is why the tariffs are not expensive. We do not show the rate on bills of lading. We do the rating out for the Southern agent. He does not question any rate I give him (Tr. 3430). Our agent at Ware Shoals is more capable than the Southern agent at the Junction. We do everything except

make expense bills and the daily receipts reports. The contract I refer to is between the Southern and the Ware Shoals Railroad Company. It covers engine arrangements, car hire and routing of traffic (Tr. 3431). We get control of the traffic so we can deliver it to the Southern because it is delivered to us unrouted. We can trade it off to the Southern in return for the car hire and engine arrangement. The contract does not say anything about a trade, and I don't [fol. 658] mean that everything delivered to us does not have routing. We prefer the routing via the Southern (Tr. 3432). Our railroad does have the right to control the routing, so that we can go to the Southern, make this contract and deliver the traffic in accordance with the contract. If the Manufacturing Company should want to route its traffic, there is no reason why it should not do so (Tr. 3433). The shipper has the right to route the traffic if he wants to. The contract provides that we are to deliver unrouted tonnage to the Southern. If somebody requests the mill to route via the Piedmont & Northern, the mill routes it, and we comply with the instructions. That only happens when the consignee or the fellow at the other end wants it done (Tr. 3434). If one of our shippers wants to route via the Piedmont & Northern, he can do it, and it is not necessary that the consignee make the request. I think there is some additional expense on our road in billing traffic through to destination which we would not incur if the traffic was handled on a local rate and billed only to the point of interchange (Tr. 3435). I can not think of any additional expense other than the cost of computing rates and the cost of billing. We make three or four copies of waybills, but as between local waybilling and where the traffic is handled on a switching charge, I think there would be some difference. I said that in my opinion it would cost us about $50 a month more to make local waybills (Tr. 3436). I don't know exactly but that is my estimate.

R. S. Galloway was called as a witness and, being duly sworn, testified as follows:

I am President, Treasurer and Manager of the Due West Railway. It is not shown on Exhibit 319 but is two miles above Ware Shoals and connects with the Southern Rail-

way at Donalds, South Carolina (Tr. 3437). The road is a [fol. 659] steam road, standard gauge, 4.63 miles long, and runs from Due West to Donalds, where it has its only connection. The road has two small engines, passenger coach, combination coach and a flat car. Lately we have bought a combination Ford bus which will handle 15 passengers, express and l. c. l. freight. At Due West we have about 27 business houses, including oil stations, cottonseed oil mill, ice plant and ginneries. There are also two colleges and a theological seminary at Due West. Most of our traffic is fertilizer, coal, merchandise, etc. (Tr. 3438). About 35% of our traffic is outbound and about 65% is inbound. The road was built about 18 years ago for the convenience of the community, just as we would build a school house or church. The citizens decided that they needed a railroad, so we built this road from Due West to Donalds for the use of the community. Due West is a town of 1200 people, serving a surrounding territory of 60 square miles and having a population of 15,000. It is a Presbyterian center (Tr. 3439). The capital stock of the road is $25,000, $11,000 of which is owned by the town. As shown in Exhibit 12 the road is a nonsubscriber, having a demurrage basis of car hire. We have run about 18 years on the demurrage basis. In 1923 and 1924 the Southern wrote us about changing to a per diem basis. I replied, and then went to Washington to see the Southern officers. I told him that when the road was built the understanding was that the long road that got the freight would furnish the cars (Tr. 3440) on a demurrage basis and that it was on that understanding that the road was built. They then consented to the proposition and we have been on the demurrage basis ever since. In 1926 we paid about $14 in car hire. Our people are in sympathy with us and cooperate with us. We take the cars back as quickly as we can. I cannot tell you the exact number of cars we would handle under per diem, but back in 1923 or 1924, when they started to charge per diem [fol. 660] it ran at the rate of about $100 a month (Tr. 3441). We did not pay it, but it was running at that rate. The road breaks just about even but we have never paid any dividends on the stock. I am the only officer who gets a salary and I receive $35 a month. I am interested in the town and the colleges, and if the road should go down it would affect our business and colleges. I only get $35 a

month, but we have a regular complement of officers who don't receive any pay. We give 2 days' free time to our shippers and consignees (Tr. 3442), after which we charge regular demurrage rates. For a while the Southern allowed us 3 days' free time on cars, but they cut that down to 2 days. We allow the shippers whatever the Southern allows us, and when it was put on 2 days we made no objection. We collected $14 in demurrage in 1926 (Tr. 3443) and paid $14 demurrage to the Southern for cars. The road has been valued by the Interstate Commerce Commission and the value placed at about $25,000. No shipper or consignee of any size has any interest in the road. It is distributed all through the town (Tr. 3444). No industry has any stock in the railroad. We have no complaint as to our present conditions, and we only want to say we are satisfied. Our arrangement with the Southern has been pleasant and we want our present arrangement to continue. It has been perfectly satisfactory since the conference that we had in Washington, but we hope that per diem Rule 6 will not be put in in our case. We don't think we can continue running. We ask to be allowed to continue the present arrangement (Tr. 3445) as to which there has been no agitation. We own our own equipment and truck and everything except the rails. We lease them from the Southern and pay an annual rental on a value of about $60 a month. We pay rental on a valuation of $2,700 on the Southern depot at Donalds where our road connects with the Southern (Tr. 3446).

Cross-examination:

All our interline traffic is handled in foreign line equipment. The demurrage agreement under which we pay for [fol. 661] the use of cars delivered us by the Southern is a straight demurrage agreement under which each car is dealt with separately. We don't apply the average agreement. We have never tried to get credit for returning a car in less than 2 days, but if we keep it over 2 days we pay. We file certain reports with the Commission but don't always file our annual reports. The road is a party to joint tariffs and obtains its revenue from four sources principally (Tr. 3447). The road is a party to certain joint tariffs of the Southern and of various agents. A local tariff is published between Donalds and Due West. The ag-

gregate length of the railroad is 4.63 miles. Busses have practically taken our passenger service. The road is owned by the people in the town, which voted $11,000 worth of bonds for railroad aid, and we gave the town $11,000 worth of stock for the bonds (Tr. 3448). It is a gift practically as we did not build the road with the expectation of paying dividends. The Railroad Commission said we would not pay running expenses. 1926 was about the smallest year we have had due to dry weather. Our freight revenues were $6,155.50, the smallest we have ever had. It averages around $10,000 to $11,000. Our operating expenses in 1926 were $7,623.56, passenger receipts $302.85, mail $508.69, express $346.75, or a total of $7313.79. We lost $309 (Tr. 3449). Some years we make money and some years we lose it. I could guess the number of cars that we interchange with the Southern in a year's time. I suppose it would be 500 or 600 cars (Tr. 3450). The putting on of a combination bus has enabled us to continue running. It is a gasoline bus and runs on a dirt road. The Post Office Department permits us to handle the mails that way.

[fol. 662] J. A. SISK was called as a witness and, being duly sworn, testified as follows:

I am General Manager of the Appalachian Railway and the Pigeon River Railway (Tr. 3451). The Appalachian is shown as No. 2 in North Carolina on Exhibit 319. It connects with the Southern at Ela, North Carolina, and operates 18½ miles north to Parsons' Junction. At Ravensford, 10 miles from Ela, it connects with the Oconalufty Railway, which operates 3½ miles to Smokemont, and at Parsons' Junction we connect with the logging road of Whitmer-Parsons Pulp & Lumber Company. Our principal tonnage is outbound forest products from Ravensford for the mill of the Whitmer-Parsons Pulp & Lumber Company and the tonnage which we receive from the Oconalufty at the same point. 95% of our outbound tonnage comes from Ravensford. The balance comes from other stations and is principally forest products. The outbound tonnage is about 97% of the total, the inbound being negligible and consisting principally of coal and merchandise (Tr. 3452). Exhibit 12 correctly shows our basis of car hire with the Southern. We are on a straight demurrage basis with that

road, which is our only connection. I think this has been in effect since 1920. The first basis we had was straight demurrage. Sometime later we became a subscriber to the per diem rules and paid straight per diem. That was found impractical because of the inconvenience of making reports and settlements with car owners in the United States, and in 1920 we withdrew our subscription to the agreement and went on the straight demurrage basis (Tr. 3453). In September, 1927, we handled 221 outbound loads and 43 inbound loads, with a net deficit for the month of $24.78. Our car hire on the demurrage basis on these cars was $320, of which we paid $197 to the Southern. It was an unusual month, as the companies got in a lot of coal and [fol. 663] demurrage accrued up to $45 a car. We have a straight demurrage basis with shippers and consignees on the road, but have a peculiar arrangement with the Oconalufty. We figure that they require one day to haul the car in addition to free time which they allow for loading (Tr. 3454). We were allowed 2 days' free time, and if we turn a car over to the Oconalufty which has it until demurrage accrues, the Oconalufty and the Appalachian split the car hire up to the first $2. If more than $2 accrues, we pay $1 and the Oconalufty pays the balance. If we receive a car from the Southern in the afternoon, we take it up and it starts in the morning at 7. There is one day between and we made an agreement whereby the Oconalufty pays half of the first day. We pay all the car hire direct to the Southern and bill the Oconalufty for all except $1. If the total charge is $6 we pay the Southern $6 and bill the Oconalufty $5 (Tr. 3455). We have no complaint now and are thoroughly satisfied, and so far as we know the Southern is satisfied. They have not asked for any modification. We understand that the American Railway Association is endeavoring to have the arrangement cancelled, and feel that we are in danger as long as Paragraph "B" of Rule 6 remains in effect. We ask the Commission to approve the continuation of the demurrage basis on our railroad.

Cross-examination:

Our road has one engine but no cars that we interchange. We have a few which we use for local traffic on our own line (Tr. 3456). We had two carloads of

lumber from Ravensford to Cherokee in the past 5 years and that was local traffic. The Whitmer-Parsons Company controls the railroad and furnishes about 70% of the tonnage. 95% is furnished by the Lumber Company and the Oconalufty. The inconvenience of making reports to all carriers was not the only reason for withdrawing from the per diem agreement. We also thought it was cheaper and we save money. If we paid straight per diem now, our car hire would cost us from one-half to two-thirds more. [fol. 664] We did not answer the questionnaire because we were satisfied, and I would not have gone on the stand except that we wish to be let alone (Tr. 3458). We want our present basis of car hire continued. Our income statements will show demurrage collections and the records which are maintained between us and the Southern show the amount of demurrage we paid them (Tr. 3459). The carloads interchanged would be shown by the waybills. We have a joint agent with the Southern and he keeps all the records. A statement of demurrage due is made at the end of the month (Tr. 3460). Practically all of our traffic is interline, except the two cars I spoke of. More than 99% is interline. I don't remember but 3 cars of local traffic in 13 years. Most of our earnings on the interline traffic come from divisions of through rates. We have a local tariff on local shipments, but we don't participate in the through rate unless the traffic goes through the gateways. On part of our traffic we have a local rate which is added to the Southern rate to make the through charge (Tr. 3462). I could not say how much of our revenue came from local rates and how much from divisions. All of our lumber is handled on a division of through rates, but not all forest products. We perform no switching service except that we get a switching charge on carloads loaded at Ela where we connect with the Southern. We make no deliveries except an occasional carload of wood. We get $2.70 for switching it over to the interchange track, but that would not average a car a month. Those cars are subject to this same demurrage arrangement. It is not an average demurrage arrangement (Tr. 3463). We get 2 days' free time and after that we pay demurrage of $2 for the first 4 days and $5 thereafter, but we don't have many $5 cars. Our arrangement with the Oconalufty is a private arrangement, just the same as the

one with the Southern. We get no reclaim on the cars switched at Ela. On lumber, through rates are published [fol. 665] from our railroad to various points by the Southern, but our rates are 3½¢ over Ela. The Southern Railroad does not do all the shrinking. We shrink ours. We contribute 3½¢ to the rate, plus the rate from Ela (Tr. 3464). I think the Southern shrinks 3½¢ and we get 7¢ on local shipments. The purpose of my appearance is to prevent the American Railway Association from taking away what we have now. Under our demurrage basis we are allowed 2 days on each load (Tr. 3465), with Sundays and holidays additional. We are on the regular straight demurrage and have never paid one cent in dividends. The road was built in 1909. I think it is considered a tap line but don't know whether or not it was a party to the Tap Line Case. It connects with the Southern at Ela, North Carolina, and extends 18½ miles to Parsons Junction. Our side tracks amount to about 3 miles, but we have no branch lines (Tr. 3466). At Ela we have an interchange track. In 1909 we built 6½ miles of track to Cherokee and the road was operated at a loss of $10,000 a year until 1919. When the road was bonded we owed something like $100,000, but we have made a little money and paid that off. I don't know who owns the stock but the bonds are principally owned by the public. It was bonded for $200,000 in December, 1919. The expense we incurred as a subscriber to the Per Diem Agreement was the hire of one clerk. If we put it back on we will have to put on a clerk (Tr. 3467), and I don't think we could get one for less than $125 a month. Our additional expense for postage and stationery was also considerable. I think that we operated on the per diem basis during Federal control. The road operates over a mountain. The survey showed a grade of about 3%, but in places it is nearer 5%. That is the reason we made a special agreement with the Southern as we have a hard proposition. If we were not there, the Southern would have to originate the business themselves, and they feel that we can do it cheaper than they can. We cross a mountain after [fol. 666] we leave Ela (Tr. 3468). It is down grade until we come to the mountain and then it is up and down. The grade is a little bit over a mile across, about three-quarters of a mile up and three-quarters of a mile down. Six loaded

cars can be carried over the grade. With a train of 30 cars, it takes 5 loads to get over it. I don't know what the maximum level of a tap line would be (Tr. 3469). We did not get the 2 days' free time during Federal control. The Cherokee Indian Reserve School, which is a Government school, is still on our railroad, and if it was taken up the school would be without transportation. If the Lumber Company discontinued operation, we figure it will last about 10 years and then the whole thing will be abandoned.

J. I. McLain was called as a witness and, being duly sworn, testified as follows (Tr. 3470):

I am Superintendent and Auditor of the Bennettsville & Cherew Railroad. It is shown as No. 3 on Exhibit 319 and extends from Kollocks, South Carolina, to Brownsville, South Carolina, a distance of 32 miles. It connects with the Seaboard Air Line — Kollocks and the Atlantic Coast Line at Bennettsville. The principal commodities are cotton, fertilizer, brick, tile, and lumber, and about one-third of our interline traffic is handled by our connections as an intermediate carrier. We handle no traffic as an intermediate line, but have about 25 cars a month from the Seaboard at Kollocks, which we take to Bennettsville (Tr. 3471) and which are delivered to industries and by the Atlantic Coast Line which acts as our delivering agent. The industries are located on the Atlantic Coast Line, and we turn the cars over to it for switching. That traffic originates on the Seaboard or its connections and we get it at Kollocks. We absorb the switching charge of the Atlantic Coast Line of $2.25 a car and a reclaim of $2.23 a car, which is based on a 6-months average (Tr. 3472). It costs us $4.48 [fol. 667] to bring a car to Bennettsville and have it delivered by the Atlantic Coast Line on its terminal, the charge being made of $2.25 switching and $2.23 reclaim. For the same service when we perform it, the Atlantic Coast Line pays $3.76, $2.25 switching and $1.51 reclaim (Tr. 3473). In January, 1927, our average per diem per car was $2.49 and in 1926 our average detention was about $2.75 days per car (Tr. 3474). Most of our interline ton-

nage moves through the gateway of Richmond, Virginia, and the time between Richmond and our junction is less than 48 hours. No allowance for terminal service is necessary on the foreign line, as our connections handle the tonnage as intermediate carriers. Bennettsville has a population of about 5,000. Practically all of our carload freight is interline, and is handled in terminal or originating service by our road in connection with the Atlantic Coast Line or Seaboard (Tr. 3475). In 1926 we handled about 5,500 carloads and of this number about 400 were received from the Seaboard at Kollocks and delivered to the Atlantic Coast Line at Bennettsville for terminal switching. Our road has no financial connection with any industry or individual which it serves. It was valued by the Commission as of June 30, 1918 at $345,000. Our road was constructed between 1903 and 1911 and in September, 1921, part of the operation was abandoned under authority of the Commission. In 1926, our total operating revenue was $121,215.03, freight revenue $116,173.32, demurrage revenue $1,015.00, total operating expenses $77,771.12, taxes $7,351.60, leaving railway operating income at $36,092.31 (Tr. 3476). By railway operating income I mean net railway operating income and without taking out car hire it amounted to $36,092 in 1926. Our hire of equipment was $16,711.67, leaving net railway operating income of $19,380.64. Our per diem was 14.5% of our gross reve-
[fol. 668] nues from freight service (Tr. 3477). We subscribe to the car service and per diem rules agreement but own no interchanged freight cars. We have a small amount of local traffic and use foreign cars for it, but these cars are used for reloading and there is very little delay. Between Bennettsville and Kollocks we have 13 stations from a mile to 6 miles apart. The traffic to and from these stations consists of coal, wood, brick, fertilizer, lumber and cottonseed (Tr. 3478). The road has been a subscriber to the Per Diem Rules Agreement since 1922. It subscribed because it could not get a reclaim as a non-subscriber under Paragraph (f) of Rule 5. We are not in favor of per diem and reclaim on switching, but would prefer to make settlement direct with our two connections rather than make daily reports and monthly settlements with all car owners. We ask for 2 days' free time the same as is allowed shippers or consignees, with per diem thereafter at the

established rate. We think we are entitled to that because we are a terminal and originating carrier and most of our interline tonnage is transported by our connections as intermediate carriers. Therefore, the day basis of computing car time is unfair to us. We do not object to the car owner receiving $1 a day (Tr. 3479), but do not feel that the per diem rules properly distribute the per diem charge between our road and our connections on these movements. We receive no benefits from our subscription to the per diem rules, except the reclaim. I have prepared a comparative car hire statement covering January, 1927, and also the first 5 months of 1927.

(Said document received in evidence as Exhibit No. 334.)

I have also prepared a statement of the consist of our carload tonnage in January, 1926 and January 1927 (Tr. 3480).

(Said document received in evidence as Exhibit No. 335.)

I have also prepared a statement of loaded cars delivered to our connections inbound and outbound in January, 1926 and 1927:

(Said document received in evidence as Exhibit No. 336.)

Cross-examination:

[fol. 669] The reclaim which we allow the Atlantic Coast Line is based on a 6-months average (Tr. 3481). We took the actual detention on each car in a 6-months period, averaged it up, and then took the average figure arrived at in that way. The period of 2.23 days was fixed on April 27th. Our reclaim of 1.51 was determined in the same manner and at the same time. The difference is due to the fact that we handle cars faster than the Atlantic Coast Line. The Atlantic Coast Line handled about 400 cars for us in terminal switching service in 1926, and in the same year we handled less than 100 (Tr. 3482) in the same service. After getting our average figure on a check of cars handled in terminal switching service for a 6-months period, we use that average figure as a basis for settlement for succeeding periods. The last check was made on April 27th, but our road can have a check at any time (Tr. 3483). The check made covered the previous 6 months, and as to cars

lumber from Ravensford to Cherokee in the last 5 years and that was local traffic. The Whitmer-Parsons Company controls the railroad and furnishes about 70% of the tonnage. 95% is furnished by the Lumber Company and the Oconaluftv. The inconvenience of making reports to all carriers was not the only reason for withdrawing from the per diem agreement. We also thought it was cheaper and we save money. If we paid straight per diem now, our car hire would cost us from one-half to two-thirds more. [fol. 664] We did *not answer* the questionnaire because we were satisfied, and I would not have gone on the stand except that we wish to be let alone (Tr. 3458). We want our present basis of car hire continued. Our income statements will show demurrage collections and the records which are maintained between us and the Southern show the amount of demurrage we paid them (Tr. 3459). The carloads interchanged would be shown by the waybills. We have a joint agent with the Southern and he keeps all the records. A statement of demurrage due is made at the end of the month (Tr. 3460). Practically all of our traffic is interline, except the two cars I spoke of. More than 99% is interline. I don't remember but 3 cars of local traffic in 13 years. Most of our earnings on the interline traffic come from divisions of through rates. We have a local tariff on local shipments, but we don't participate in the through rate unless the traffic goes through the gateways. On part of our traffic we have a local rate which is added to the Southern rate to make the through charge (Tr. 3462). I could not say how much of our revenue came from local rates and how much from divisions. All of our lumber is handled on a division of through rates, but not all forest products. We perform no switching service except that we get a switching charge on carloads loaded at Ela where we connect with the Southern. We make no deliveries except an occasional carload of wood. We get $2.70 for switching it over to the interchange track, but that would not average a car a month. Those cars are subject to this same demurrage arrangement. It is not an average demurrage arrangement (Tr. 3463). We get 2 days' free time and after that we pay demurrage of $2 for the first 4 days and $5 thereafter, but we don't have many $5 cars. Our arrangement with the Oconaluftv is a private arrangement, just the same as the

switched by us the average was 1.51 days. We use that figure as the amount of our reclaim for the future until another check is made and the basis changed. At present we pay per diem on cars handled in terminal switching and then reclaim $1.51 from our connection on each car. That will run until one of the roads calls for a check (Tr. 3484). In counting the time we count from 12 midnight. The holding of a car by a consignee would make no difference as we or the Coast Line would collect demurrage. In working up an average all the days are counted. I let the car accountant of the Coast Line make the check and I abide by his decision. He can do it so much better than I can that I let him do all the checking as he has both records (Tr. 3485). Most of our traffic is handled in line haul service and originates or terminates on our line. We have very little local traffic. I would say that the Seaboard gets most of the traffic, as it gets all the business originating at Bennettsville. We have no divisions with the Coast Line on [fol. 670] that basis. I think our road is a party to joint rates on all line haul traffic. The length of our main line is 32 miles, and we have a 2 mile spur, then a 5 mile side track (Tr. 3486). The road is owned by various stockholders but is not owned or controlled by any particular industry. When I speak of intermediate traffic handled by our connections, I mean that about one-third of our inbound and outbound traffic is handled by our connecting lines as an intermediate carrier. We are asking for 2 days' Free time on everything with per diem thereafter. I think our average haul is about 15 miles (Tr. 3487). We operate through level country, a farming section. We own 3 locomotives but no freight cars except 2 work cars. All our interchange traffic is handled in foreign cars. I don't know what basis of settlement was in effect during Federal control. To illustrate my statement of overhead traffic, a car from New York would be originated by the Pennsylvania, delivered to the R. F. & P., delivered by it to the Seaboard and then to us. The Seaboard would be a bridge railroad (Tr. 3488). The County we serve holds the world's record for corn and cotton production, and is very populous and a good many people are dependent on the railroad. I don't know the population of the territory we serve.

J. T. ANDERSON was called as a witness and, being duly sworn, testified as follows:

I am Superintendent of the Oneida & Western Railroad, which connects with the Southern Railway at Oneida, Tennessee (Tr. 3489). Our road subscribes to the per diem rules of the American Railway Association. I understand that the American Railway Association is trying to take away from the short line connections any privileges that they enjoy. I want to protest against that as unfair. We were forced into becoming a member of the per diem rules agreement because we had some cars with nothing to do. To let the cars earn revenue, we wanted to put them into for-[fol. 671] eign service, but found out that the trunk line railroads would only give us mileage. They would keep it 3 or 4 months, and we would find that we had 30¢ or 40¢ coming to us (Tr. 3490). In order to receive per diem on those cars, we had to become a member of the per diem rules agreement. After becoming a subscriber, we found it would cost us $40 a year for the membership, besides the publication in the Equipment Register of the number and description of our cars. Also, we formerly reported per diem direct to the Southern, but after the cars were put in service we found that we had to report to each individual road. The Southern was willing to pay us per diem due us and give us credit for per diem on our cars, and we would pay them rental on other equipment, but I understand the rules of the Association prevented us from doing that and forced us to go to the additional expense and burden of paying individual carriers for the cars (Tr. 3491). Our road is No. 10 in Tennessee on Exhibit 319. We own five 100,000 capacity flat cars, two 80,000 capacity cars, one 60,000 capacity car and two 80,000 capacity box cars. They are not all in the Equipment Register because we are just putting them through the shop before they go in service. We had to join the A. R. A. to get per diem on our cars instead of mileage. The Southern Railway has allowed us per diem and there may be one or two others, but I can't say definitely (Tr. 3492). The Pennsylvania and various other trunk lines would not allow us per diem. The Southern would give us per diem as a matter of courtesy. We appear here because we don't want the Southern's hands tied in case we decide to retire from the A. R. A. Our relations with the

Southern have always been satisfactory, and we do not wish to get to the point where we can't deal with the men we do business with, in connection with freight over the Southern (Tr. 3493). The road is on top of the Cumberland plateau. Within half a mile of Oneida is the highest [fol. 672] point on the Southern between Chattanooga and Cincinnati. We go practically level for 2½ miles out of Oneida and then start down the mountain on grades varying from one-fourth of 1% to 3%. The curves are as high as 25 degrees. We have 85 pound rail and the track is ballasted. About 90% of our tonnage is lumber and forest products. We have through rates published from our railroad and are a party to various tariffs on lumber. We get divisions of the through rates (Tr. 3494). The lumber rates from points on our road are higher than they are from Oneida, so that we contribute part of the rate and the trunk lines do not contribute all of it. Our railroad is 30 miles long, with about 4 miles of side tracks and a spur 7 or 8 miles long which does not belong to the railroad. We deliver about 300 carloads of lumber to the Southern per month. In some months we deliver as high as 600 cars (Tr. 3495). The lumber market is not now active, but over a year I think we would deliver an average of 400 cars a month. I think that is fairly accurate. We haul lumber up the mountain for 9½ miles and around the curves, and give it to the Southern and it can almost turn it loose and let it coast into Cincinnati or Chattanooga (Tr. 3496). I mean that we take the lumber up steep grades and that it takes very little to carry it from our connection into Cincinnati. We take empty cars down the hill out of Oneida and get them loaded. We then bring them back to Oneida, up the grade, loaded and deliver them to the Southern. The Southern crosses the mountain at a point within half a mile of Oneida and from there the car will roll down the mountain easier than it will roll up. Last year our gross earnings were about $300,000 and out of that our net earnings were about $78,000. Our reports are on file with the Commission (Tr. 3497). We have no complaint to make against the Southern but ask the right to deal with the Southern alone at any time on anything, and that our line and the Southern may not be forced to go to the A. R. A. to [fol. 673] find out what we have to do.

Cross-examination:

We felt that we should receive per diem of $1 a day for our cars while other roads were using them, and we could not get it unless we joined the Association. Our specific complaint is that we could not get that $1 a day for our cars without joining the Association. Our road is now a member of the Association and pays and receives regular per diem (Tr. 3498). The $78,000 I spoke of is the money our stockholders got in dividends. It is net railway operating revenue. That was what was left after we got through paying everything. The Commission has valued our road, and I think the value was from $1,200,000 to $1,400,000. I don't think that because we made money last year that we will this year (Tr. 3499). Business is falling off, but we should not be penalized because we made money as a result of efficient operation. If we can operate our railroad and make money that ought not to have anything to do with whether or not we get relief from the Interstate Commerce Commission. The fact that we make money should not mean any difference in our right to receive compensation for our cars when somebody else uses them. The stock of the railroad is owned by various stockholders (Tr. 3500). One of the lumber companies has an interest in the railroad but the majority of our lumber company is not supplied by the concern that owns the stock, although they furnish a considerable amount. I don't know what proportion of our traffic comes from that particular company. I am not prepared to say that the lumber company owns less than half of the stock, as I don't know. We serve 12 or 15 lumber companies (Tr. 3501). Our longest haul is 30 miles which is the length of the railroad. There is a spur from the end of our railroad which is owned by the Tennessee Stave & Lumber Company. It was originally about 25 miles long. After the first 8 miles it goes over an incline with a 37% grade. They brought the logs up the incline and delivered them to us. They were dragged up the mountain by steel wire rope. Our average length of haul is about 15 miles, [fol. 674] as we get quite a bit of traffic 2½ miles out of town and quite a bit 30 miles away (Tr. 3502). A very small percent of our 9½ mile grade is 3%. That is the ruling grade. We have one locomotive that will haul 9 cars up grade, one that will haul 6 and 4 that will haul 7. The number of trips that we make up that grade a day varies.

Normally, we run 2 trains a day each way and an extra 2 or 3 times a week. Business now does not keep one train busy. The $40 I spoke of was the membership dues in the American Railway Association. I think that the Equipment Register expense was $50 or $75 a year (Tr. 3503). We have to list our cars in the official railway equipment register so that the ownership can be identified and so that the number of cars, kind, etc., may be a matter of public record. It informs other carriers where to send our bills and records. I understand that the A. R. A. has nothing to do with the equipment register; that when we put our cars in foreign service that was part of the expense we had to go to. We do not charge that to the Association, but it is more expense than we would be put to if we did not have the cars. I don't know what basis of car hire settlement we had during Federal control. Before we joined the Association and put the cars (Tr. 3504) out, we made a statement of interchange to the Southern each day and paid the Southern the car hire due. Now we have to send a notice to the car owner on every car we receive and every car we deliver back to the Southern. We tried to put the cars out and let the other carriers report to the Southern and the Southern collect the per diem, and let us pay the Southern like we did before, which would save us some clerical work, expenses, etc., and cost the Southern practically nothing because of the size of their organization, etc. The Southern can do it cheaper than we and it said they would be glad to do it, but the rules of the Association do not permit, and the other carriers objected, so we had to [fol. 675] go into this present arrangement. The Southern told us that the other carriers objected to getting their money from the Southern (Tr. 3505). When our cars are on foreign lines we get these same interchange reports but I would just as soon have them send us a check and not send us reports. I don't care who we get the money from so long as we get it. At the end of each month we make up a statement for the C. & E. I. and tell them to draw on us for $5 or $10, whatever it is. They send a draft and we honor it and they are paid. We don't care about the reports if they will just let us know where our cars have been. The function of the report is to let us know where the cars are, but I don't care where they are. If they won't

send the money they owe (Tr. 3506) they won't send the statements of where the cars are. If a car is out 30 days, and I get $30 for it, that is all I am interested in. If I only got $20 I would investigate and find out where the car was, but if a man isn't going to give us authority to draw on him for per diem he isn't going to send a report, which they do not do frequently. It would save us quite an amount of money if the Southern included our per diem in their settlement with the various railroads so that we did not have to make individual settlements with car owners. When we joined the Association and made our present arrangement, I immediately hired another girl in the office (Tr. 3507). The expense of making the reports and sending them out is considerable. I don't know what it would amount to, but it is quite a sum. We are paying the girl $80 now, and the postage, printing and stationery amounts to something. I am not in a position to say how much because these things are bought through the auditor, and I don't know what they cost. The per diem we pay the Southern and other roads will average about $800 a month. In 1925 we made $60,000 or $70,000 (Tr. 3508).

J. C. STARK was called as a witness and, being duly sworn, [fol. 676] testified as follows:

I am Assistant Auditor for the Nelson & Albemarle Railway Company. We operate 17 miles of railroad, 11 of which we own and 6 which we lease from the C. & O. Our road is located in Nelson and Albemarle counties, Virginia, and connects with the C. & O. at Guthrie and with the Southern at Rockfish. We interchange with both roads. We did not file replies to the questionnaire. The road runs east from Rockfish on the Southern and connects with the north and south branch of the C. & O. (Tr. 3509). Rockfish is about the central part of Virginia. It connects there with the Southern and with the C. & O. at Guthrie. We also lease from the C. & O. a branch which runs north from Guthrie at Alberene. The curves on the road are very sharp, and recently we found we could not handle a Pullman car without danger of scrapeing against the banks. The grades are fairly heavy. The country is rolling and the line was built without attempting to level out grades. It was built as

cheaply as possible and there are a good deal of ups and downs to it (Tr. 3510). We own 3 locomotives, a few passenger cars, and a few flat cars, but our flat cars do not leave our rails. We have practically no purely local traffic. If the weather permits we handle it in our own flat cars, but if the freight may be damaged by weather, we use a foreign line car which is made empty on our line and is returned in the direction of the connection where we got it. There is very little of the traffic and it might be said to be negligible. The railway is practically controlled by the Virginia Alberene Corporation, which certainly furnishes more than 50% of the total traffic (Tr. 3511). The Alberene Company manufactures soap stone products. We serve another soap stone company and also handle some timber and other commodities of a general nature. The other soap stone company has no interest in the railroad. We serve four communities and between 5,000 and 10,000 people (Tr. [fol. 677] 3512). The road is quite important to the people of the towns we serve and the farming regions, but we could not keep going if it were not for the soap stone industry. In winter the roads are impassable and the railroad is the only outlet upon which they can depend. Our operations from 1904 to date show a deficit. In earlier years we showed some profit, but in the last 8 or 10 years we have not been able to make operating expenses. In 1926 our gross revenue was about $100,000 and our deficit in net revenue from railway operation was $5,000 or $6,000. Our road is on a straight demurrage basis of car hire without any average agreement. That basis has been in effect for years (Tr. 3513). I suppose it began when the road commenced operation, but I cannot say definitely. We have never been required to pay per diem. We began operation in 1904 or 1905. Our detention will probably average less than 2 days but on some cars some demurrage accrues. We collect about $300 or $400 a year in demurrage and pay a similar amount to the C. & O. and Southern. I think it probable that we pay our connections more than we collect. In addition to the 2 days which we allow shippers we require something for placing and removing the car. We apply straight demurrage rules to shippers and consignees, allowing 2 days' free time without any average agreement (Tr. 3514). If we had to pay straight per diem it would cost us about $4,000 a year, which would be serious as we

are not now earning our operating expenses. We think that we ought to be on the Birmingham Southern basis with 3 days' free time and an average agreement for accumulating credits on cars returned within 3 days to offset cars detained longer than 3 days. We now get 2 days and are not charged with Sundays or holidays. I think our time allowance actually exceeds 2 days. Our time is the same as we allow shippers. We are allowed the same free time by our trunk line connections as our railroad allows in free [fol. 678] time to consignors and consignees (Tr. 3515). We have no desire to make any profit on foreign line cars, and would be agreeable to any arrangement whereby any demurrage accruing against our industries would be turned over to the connecting lines. All we ask is that we be relieved of paying per diem under the present rules. Our average haul is not over 7 miles. It is 6 miles from the Alberene Company to the C. & O. and about 5 miles to the Southern. I understand that a number of switching roads have longer hauls than ours and that our service is so short that it is like a switching service since both gather up the traffic preliminary to the long line haul. We publish a local tariff containing rates which are added to the rates of our connections (Tr. 3516). We do not participate in divisions of through rates but depend entirely on our local charges. Our connections get 100% of their own rates on all traffic we receive from them or deliver to them, and if our railroad was a plant facility it would have 2 days' free time anyhow with an allowance for Sundays, holidays and weather. If we could get cars back to our connections within 2 days on the average, we would be satisfied with 2 days' free time, but sometimes the industry holds a car longer. Also, on a free time basis there would be a discrepancy in the hours from which car time is computed and we might lose free time while collecting no demurrage from the industry. Our present arrangement has worked fairly well, although we do have to pay $200 or $300 a year which we would like to save. We would not seriously complain if our arrangement was continued. What alarms us is this rule of the American Railway Association which hangs over our head and under which our (Tr. 3517) connections might decide to try to make us pay straight per diem. I understand that was considered at one time and that both the connections conferred and decided it would be reasonable

to continue our present basis. That arrangement remained [fol. 679] undisturbed. Last March we wrote to our connections saying that we understood the Association was making an effort to enforce a strict per diem basis, and that we thought it would be unfair for us in view of our short haul. We got a reply from the Southern saying that the matter had been submitted to the Commerce Counsel and he had ruled that pending settlement of the entire question (Tr. 3518) now before the Commission they could not sign a letter saying that the present arrangement was satisfactory, but saying that their action should not be considered as prejudicial to the existing arrangement. The C. & O. replied that the matter was before the Commission but that if the Commission did not lay down any rule the C. & O. would continue its present practice. Most of our outbound tonnage goes beyond Washington and on such shipments our connections will be getting the long haul with no expense of free time, unless they contribute the free time that we pass on to our shippers. I mean that they would have no terminal expense to pay and much less per diem in proportion to mileage than ours would be (Tr. 3519). It is about 190 miles on the Southern from their connection with us to Washington. I imagine that if we delivered them a car at 7 in the morning they could get it to Washington that evening before 12 o'clock. The maximum per diem that the Southern would have to pay would be perhaps two or three days, whereas we have two days on 5 or 6 miles. I am trying to give a liberal estimate but have no accurate information (Tr. 3520). In 1926 our railway operating revenue was $96,060.10. Our net railway operating income was a deficit of $6,854.82 and our net income after payment of fixed charges was a deficit of $16,360.55. Since 1922 we have been in the red on both net railway operating income and net income, except in 1925 when our net railway operating income was $669 and our net income was $9,503.40. Our losses have been almost as high as $28,000 a year.

Cross-examination:

The Alberene Corporation has furnished money to pay [fol. 680] our operating deficits. When the road was constructed it had a bond issue of $135,000. In 1915 when the

bonds became due the road could not pay and they were extended for 3 years and in 1918 to keep the road in operation the Alberene Corporation guaranteed $100,000 worth of bonds for the railroad. The Alberene Corporation owned no stock in the road at the time, but it is a necessity (Tr. 3521) to the soap stone industry. Since then, realizing that losses in railway operation must be met by it, the Alberene Corporation purchased the common stock of the railroad. We have quite a short line, but perform all the service to our shippers that a trunk line performs. We collect a regular local charge for our service which is not a switching charge. Our service is not performed within any switching district. Recently, I was informed that the Southern had published a tariff containing through rates on our road. I have been checking that up but the rates have not been used so far as I know (Tr. 3522). I don't understand about it as none of our employees had heard of it. Under our car hire arrangement we actually pay something more in demurrage than we collect. The difference would amount, I think, to $200 or $300 a year. We get almost an even break on what we pay out and what we get in and have no complaint to make of the present arrangement. I mentioned the Birmingham Southern arrangement because if the Commission should decide that a more favorable arrangement was fair to the small lines we would like to have it (Tr. 3523). Something over 50% of our traffic comes from the Alberene Corporation. Our interchange over a year is about 1,500 cars outbound and 350 to 500 cars inbound. Our revenue is from $25 to $35 a car on carload freight which is most of our traffic. That is on soap stone products (Tr. 3524). It does not represent our average but is rather high for the average (Tr. 3525). I don't know of any switching tariff that carries switching rates [fol. 681] on which the road receives a reclaim (Tr. 3526).

J. P. Ipock was called as a witness and, being duly sworn, testified as follows:

I am General Manager of the Elkin & Allegheny Railroad. I have executed the Commission's questionnaire.

(Said document received in evidence as Exhibit No. 337.) (Tr. 3527.)

We connect with the Southern Railway at Elkin, North Carolina, and run 15 miles northwest to the stub-end at Veneer. 80% of our total freight tonnage originates at or is delivered to the station of Doughton, eight-tenths of a mile this side of Veneer. Our only industry is the Elkin Shoe Company, at Adsit, one mile from Elkin. The inbound tonnage for this industry is coal and boxes. There is little or no outbound carload traffic from this point, as the Shoe Company ships those products in less than carload quantities. 75% of the tonnage at Doughton is outbound forest products. The inbound tonnage is principally fertilizer and merchandise. No industry on our rails has any interest in the railroad (Tr. 3528). Our road was organized in January, 1920 to take over and operate the property which had been built about 1911 and was in receivership. It was originally intended to construct the road across the mountain to connect with the Norfolk & Western, but the money ran out and construction stopped at Veneer. The stockholders are largely local citizens. The road serves an area of about 150 square miles with no other railroad in it. Its abandonment would decrease land values and render the timber areas worthless as road hauling is impracticable (Tr. 3529). Since 1920 we have paid car hire on the straight per diem basis. I am told that prior to then a demurrage basis was in effect at one time. Exhibit 33 shows that in 1925 we handled 638 per diem cars with detention of 3.2 days per car. We also handled 36 [fol. 682] mileage cars. In that year we paid $2,021.50 in car hire to the Southern on per diem cars and $6.93 in mileage. We collected $344 in demurrage which was abnormal. As road oil which was shipped to points on our line was not unloaded promptly, demurrage on some cars was as high as $75 (Tr. 3530). This demurrage was also collected on mileage cars so that the demurrage on the per diem cars was much less than the total. We are not satisfied with the present per diem rules as applied to our conditions, as they work out unfairly to us, as we are a terminal feeder line. We have all delays incidental to terminal service, such as weighing, spotting and free time to shippers and consignees. Our average car mile per day is 7, whereas the average on the Southern is several times this distance. The Southern earns money on line-haul movement, whereas the car stands still on our rails. Tank

cars are admittedly more costly than the ordinary freight cars, but we pay about 45¢ a car on tank cars (Tr. 3531), whereas, we pay an average of $3.20 per car on per diem cars. One of the two bases is wrong. We ask for a demurrage basis of car hire with 3 days free time, or substantially the modified Birmingham Southern basis. We took this up with the Southern in 1922, asking for the demurrage basis, and I was told that none of the short line connections of the Southern were being given any basis other than the straight per diem. A year or so ago the Southern finally admitted that they had some short lines on a demurrage basis which had been continued out of courtesy, but that they were going to have to apply the straight per diem to those lines also. The Vice President of the Southern wrote our President suggesting that a complaint be made against the Southern, asking for a more favorable basis, and that, if the Commission (Tr. 3532) held that we were entitled to it they would be glad to give it to us. We did not file the complaint as the proceedings in this [fol. 683] case was started about that time. According to the evidence the Southern Railway has not discontinued the demurrage practice. We also object to Paragraph "B" of Rule 6 of the Per Diem Agreement, as that is the rule which the Southern urges as forbidding any modification of our present basis. If the present per diem basis is unfair to us now, it has been unfair in the past, so that we not only want the change made but we want it retroactive to 1920 (Tr. 3533). If the Commission holds we are not entitled to 3 days, then we want some basis other than 3 days. In 1925, 72.1% of the cars interchanged were Southern Railway System cars. The Commission has valued our road finally as of 1916 at $335,046. One officer of the old railroad company says that prior to 1920 our road had the demurrage agreement (Tr. 3534) and the Auditor of the Southern told me that he was under the impression that we were on a demurrage basis when he was Superintendent of our road. He thought we were still on it.

Cross-examination:

We handled no cars in terminal switching service in 1925, and that traffic is small in any year. We don't average a car a year on local traffic. Our road is a party to joint

are not [illegible] earning our operating expenses. We think that we ought to be on the Birmingham Southern basis with 3 days' free time and an average agreement for accumulating credits on cars returned within 3 days to offset cars detained longer than 3 days. We now get 2 days and are not charged with Sundays or holidays. I think our time allowance actually exceeds 2 days. Our time is the same as we allow shippers. We are allowed the same free time by our trunk line connections as our railroad allows in free (Tr. 3514) time to consignors and consignees (Tr. 3515). We have no desire to make any profit on foreign line cars, and would be agreeable to any arrangement whereby any demurrage accruing against our industries would be turned over to the connecting lines. All we ask is that we be relieved of paying per diem under the present rules. Our average haul is not over 7 miles. It is 6 miles from the Alberene Company to the C. & O. and about 5 miles to the Southern. I understand that a number of switching roads have longer hauls than ours and that our service is so short that it is like a switching service since both gather up the traffic preliminary to the long line haul. We publish a local tariff containing rates which are added to the rates of our connections (Tr. 3516). We do not participate in divisions of through rates but depend entirely on our local charges. Our connections get 100% of their own rates on all traffic we receive from them or deliver to them, and if our railroad was a plant facility it would have 2 days' free time [illegible] with an allowance for Sundays, holidays and weather. If we could get cars back to our connections within 2 days on the average, we would be satisfied with 2 days' free time, but sometimes the industry holds a car longer time, as a free time basis there would be a discrepancy in the hours from which car time is computed and we might lose from time while collecting no demurrage from the industry. Our present arrangement has worked fairly well, although we do have to pay $200 or $300 a year which we would like to save. We would not seriously complain if our arrangement was continued. What alarms us is this rule of the American Railway Association which hangs over our head and under which our (Tr. 3517) connections might decide to try to make us pay straight per diem. I understand that was considered at one time and that both the connections conferred and decided it would be reasonable

through rates on most interstate traffic (Tr. 3535) and, except on some commodities, our division is equal to our local rates. On about 50% of the traffic we get our full local division. The through rates to our line are higher than the junction rates by 1½ to 2½¢ a hundred pounds. The Southern shrinks its rate about 3½% on lumber and about 4¢ a hundred on cement. Our road operates through hilly country and we have some pretty heavy grades up to 2½% (Tr. 3536). We have some grades on traffic outbound from Doughton, but not as heavy as in the opposite direction. Starting at Elkin we go about 1½ miles on level track, then for about 5½ miles we have a grade of from 1% to 2½%. Then there are 4 or 5 miles of small grades up and down and the balance is about 2% to the end of the line. We do some passenger business but we dis- [fol. 684] continued it in 1923, as it got down to $35 a month. The revenue shown on the questionnaire was all derived from freight traffic, except the demurrage of $344 (Tr. 3537). There was no passenger revenue in 1924 or 1925, and the revenue shown is all freight revenue except the demurrage. The terminal weighing cost which we sustained does not amount to an appreciable sum. It is hard to estimate, as it takes 5 minutes or maybe 30 minutes to do the weighing. We do not bill the traffic we originate to destination, but handle it through junction settlement at Elkin. It was at one time on our line but is not now. We collect our revenue from point of origin to Elkin on our local billing (Tr. 3538). The Southern collects its revenue from that point to destination, billing the shipment itself. I do not know the population of the territory we serve, but it is more or less thinly settled. With the exception of lumber, cement and things of that character, our rates are made on the Elkin combination and the Southern does not shrink any of its earnings. We issue a bill of lading, then weigh and deliver the cars to the Southern on a waybill with our charges shown. They have to apply their proportion of the freight and rebill it (Tr. 3539). We weigh the shipments. That system was in effect when I went there, and the Southern has not asked that it be changed. We perform some weighing for the Southern for which we make no charge. It amounts to about 6 cars a year. The road is not a party to the demurrage tariff, but

we have been applying those rules and expect to adopt the regular demurrage tariff. We allow 2 days Free time and *and* the charges are $2 a day for 4 days and $5 a day thereafter (Tr. 3540).

J. F. CANNON was called as a witness and, being duly sworn, testified as follows:

I am Comptroller of the High Point, Thomasville & Denton Railroad. It is No. 12 in North Carolina on Exhibit No. [fol. 685] 319 and runs from High Point to Thomasville and High Rock (Tr. 3541). At High Point it connects with the High Point Randleman & Southern and the Southern Railway, at Thomasville with the Southern Railway and at High Rock with the Winston-Salem Southbound, a subsidiary of the Atlantic Coast Line and Norfolk & Western. I have been in railroad work 35 years and 25 years in the Accounting Department. I have prepared an answer to the questionnaire sent out by the Commission.

(Said document received in evidence as Exhibit No. 338.)

The Railroad Company was organized in May, 1923 (Tr. 3542), as a community proposition by the people of High Point, Thomasville and Denton. It took over the property of a company which ceased to operate early in 1923. The road is 34.81 miles long and parallels the Southern from High Point to Thomasville. We connect with the Winston-Salem Southbound at High Rock and interchange practically all our traffic with it. The mileage I gave is main track. We have between 10 and 11 miles of side track. The road was built prior to 1923 and was in the hands of a receiver for a number of years. It was abandoned and sold and then the people in the community purchased it (Tr. 3543). The road is doing pretty well now as it is in the manufacturing center of the state and the people who invested the money to buy it are principally large manufacturers who give us most of their business. Because of this, we are making a profit now. Our stock is about evenly distributed between the industries we serve and local interests. We are subscribers to the American Railway Association Per Diem Rules Agreement and settle car hire

under that basis (Tr. 3544). We do not feel that because we are making some money now we ought to pay more than our fair share of the cost of owning cars which we use jointly with other roads. We think our proportion of car hire to divisions with that of foreign lines is very unreasonable and grossly unjust to us. We pay for cars on the basis of the time we have them on our rails, but we claim [fol. 686] this is not fair as we have to stand all the terminal delay. Our connections get more money proportionately out of the business than we do and pay much less car hire. I have statistics of the first 100 inbound carloads from February 1, 1927, and the outbound for the same period of time, which prove that we pay more than our just proportion of car hire. By comparing the percentage of our earnings to that of the foreign lines and the percentage of car hire to that of foreign lines (Tr. 3545) we pay 13% of our earnings for car hire on inbound and outbound carloads. On inbound cars, foreign lines pay 3%, but I do not know the percentage on outbound loads as we do not know what time the car hire ceases. We tell on the inbound cars by the date of the waybill, to which we added 2 days for loading. On inbound carloads, our percentage of car hire to earnings is 13% and on foreign lines is 3%, adding the 48 hours (Tr. 3546). My first exhibit is a list of the 100 inbound loads.

(Said document received in evidence as Exhibit No. 339.)

My next exhibit involves 119 outbound carloads for the same period (Tr. 3547).

(Said document received in evidence as Exhibit No. 340.)

My next statement is a summary of the data on Exhibits 339 and 340.

(Said document received in evidence as Exhibit No. 341.)

We want to settle our car hire on the per diem basis with 2 days free time, as that would materially help in equalizing our percentages of earnings and car hire to that of foreign lines (Tr. 3548). The statistics show that for the year 1926, it would reduce our car hire approximately one-half. If we had a loaded car in and the same car loaded out, we want 2 days' free time on the inbound movement and 2 days on the outbound movement. I have prepared a comparison

of our present car hire basis and other bases covering the periods shown in the statement.

(Said document received in evidence as Exhibit No. 342.)

We think that the roads handling the traffic should bear the burden of our proposed basis of car hire settlement (Tr. 3549) because they get all of *of* our interline traffic with [fol. 687] practically no terminal delay. Their proportion of revenue to car hire is more favorable to them than ours is to us, and they should relieve us of our unjust burden. We handled the matter with the Norfolk & Western in an attempt to get a more favorable adjustment, but we got practically no satisfaction.

Cross-examination:

The road has 263 stockholders and $15,000 worth is as much as any one factory or person owns. Probably all the stock is owned by people that do more or less business with the railroad (Tr. 3550). It should not be understood that one industry owns the railroad and furnishes 90% of the traffic. On Exhibit 338 it appears that we have no freight cars, but that is not true at this time. We have 10 cars, 8 of which are interchangeable. They are interchanged and we receive $1 a day per diem for them while on foreign lines. The figure of 13,570 shown in the answers to questions 7 and 8 in Exhibit 338 includes, I think, only per diem cars (Tr. 3551). Dividing the total number of cars into the total detention, it appears that the detention in 1925 was approximately 3 days. The 1926 figures are in Exhibit 342. In that exhibit only per diem cars were included and I think our average detention increased somewhat in 1926. In the form for answer to question 9 in Exhibit 338, the 3470 cars shown were delivered to us by the Winston-Salem and handled by us to the Southern at High Point and Thomasville where they are handled by the Southern in terminal switching service (Tr. 3552). Our road performs terminal switching service at High Point, Thomasville and High Rock. High Point and Thomasville are the principal points. In the form for answer to question 10 in Exhibit 338, the 1840 cars shown originated on our railroad and were delivered to the Winston-Salem Southbound.

The answer is in error as those cars were through loads and were not handled in terminal switching. They were originiated by us in terminal switching service and hauled in line-haul movement by a connecting trunk line (Tr. 3553). The 3,145 cars are those delivered to us by our connecting. [fol. 688] trunk lines and handled in terminal switching service. The total number of cars shown produced the total revenue shown of $2,274.75. We get a reclaim on cars handled in terminal switching service and pay a reclaim to our connections when they perform the same service. The revenue of $2,274.75 accrued on 1840 cars (Tr. 3554). We receive $2.25 a car for terminal switching which we perform and pay the same amount.

Mr. Streyer: The page of Exhibit 338 showing the answer to Question 10 is apparently incorrect. We wish to file a corrected statement or an explanation within 15 days.

Examiner Rice: You may file a statement to show that this is a substitute for the answer to Question 10 (Tr. 3555).

The Witness: In 1925 we handled 248 carloads which originated and terminated on our line. This traffic was handled in foreign line equipment. I don't know how much local traffic we handled in 1926 but it was small. It was also handled in foreign equipment. The $840 demurrage shown in the answers to Questions 13, 14, 15 and 16 of Exhibit 338 was not paid by proprietary industries as they are not proprietary. The stock is owned by about 260 patrons of the road and are consignees or consignors (Tr. 3556). They control the road but no one concern does. I don't think much of that $840 demurrage accrued against the stockholders. Most of it accrued against contractors. The statement in the answer to Question 17, Exhibit 338, that we have per diem at 75¢ a day was arrived at without investigation. Our General Manager said that he thought 75¢ was a fair rate. We now wish to substitute the free time asked for in place of the 75¢. We are agreeable to having the same principle of free time apply to our cars when used for other railroads (Tr. 3557). On Exhibit 340 when a loaded car came into our hands from the Southern we computed the per diem on our road as running from the date that the [fol. 689] Southern interchanged the car to us up to the time that it was made empty by the consignee. If the car

was returned empty to the Southern, we have also included in our per diem the per diem that accrued between the time the consignee unloaded and the time the car was sent back (Tr. 3558). In the case of the fourth car on the first page, the $9 per diem shown is the entire amount that accrued while we had the car. I don't know how much of it accrued after the consignee unloaded and before the car was sent back empty to the connecting line. That is true with respect to all cars that were made empty on our rails and sent back empty to the connecting line. The revenue of our line, as shown, is net, without deduction for switching or anything else. About 75% of our inbound business goes to the Southern (Tr. 3559). Exhibit 340 includes everything, whether unloaded on our rails or not, and includes that which went to the Southern. In the case of shipments going to the Southern, we have included the $4 reclaim that we pay the Southern so that in cases where we had a line haul and the cars were given to the Southern for delivery in terminal switching, we have included our line haul per diem and the reclaim to the Southern. On cars from the Southern and which were delivered by us in terminal switching, we have included the per diem accruals on our line, but we get a reclaim from the connecting line (Tr. 3560). Our reclaim offsets the per diem accrual. I don't know whether there is one of those cars in there or not, but if there had been we would have handled it that way. This only covers 5½ days and we don't get but very few from the Southern. In computing our per diem on foreign lines on inbound traffic, we have only allowed 2 days beyond the waybill date. I do not know why our detention in 1926, as shown on Exhibit 342, went up to 4½ or 5 days, as compared with the 1925 detention of less than 3 days. I am quite sure that the figures on Exhibit 342 are correct (Tr. 3561). The cars [fol. 690] handled by us in terminal switching service are included in the answers to Questions 7 and 8, in Exhibit 338 and also in Exhibit 342. We allowed $4 reclaim and receive $4 reclaim in every case except on privately owned cars. We are allowed and pay the same reclaim. When the Southern does terminal switching for us, we allow it $4 a car and $2.25 switching charge. On Exhibit 340, if some of those cars were handled by us in intermediate service and by the Southern in terminal switching service, we would

have included $4 because of the reclaim and also per diem that accrued on our line (Tr. 3562). Such cars are on our railroad about 2 days under ordinary handling. A lot of them we get from the Winston-Salem and give them to the Southern the same day. We then get them back from the Southern and to the Winston-Salem the same day with no charge except the Southern reclaim of $4. All cars shown where there is a $4 charge are those cars. On the first car, we gave it to the Southern on the day it was received, so there was no per diem. It was loaded on the Southern but we got it back and gave it to the Winston-Salem the same day. The $4 was the reclaim with no per diem on our rails as the car was received empty (Tr. 3563). The $4 was the reclaim which is determined by agreement between our company and the Southern. That was the agreement with the old railroad in effect for the last 15 years. It is a reciprocal arrangement entered into 15 years ago under which we allow the $4 reclaim and they allow us $4 reclaim, regardless of how long the car is held. Our switching charge is $2.25, the same as their switching charge. The car I have been speaking of originated at High Point on the Southern (Tr. 3564), and we delivered it to the Winston-Salem. We have no intermediate traffic, strictly speaking. Our road is a party to joint rates on all traffic. The inbound shipments of forest products consist of lumber going to the furniture manufacturers. I don't know whether or not car hire was considered when our divisions were fixed, [fol. 691] but I don't think it was. I have nothing to do with divisions on our railroad and don't know the basis on which they were fixed. I only know about it from hearsay (Tr. 3565). When the road was originally built it was a tap line. Later on it was purchased by some other people and extended. The road was built, I know, before they tried to get divisions, and the divisions that were offered by the other roads were accepted. The railroad parallels the Southern for 7 miles from High Point to Thomasville. High Point is the second largest furniture manufacturing city in the world (Tr. 3566). There are a number of industries at High Point, Thomasville and the section served by us and the Southern, and it is some of these people who are interested in the road. The inbound lumber is used for manufacturing furniture. High Point has 30,000 people and is

served by our road, the Southern and a subsidiary of the Southern, the High Point Randleman & Southern.

I. C. JOHNSON was called as a witness and, being duly sworn, testified as follows (Tr. 3567):

I am Auditor of the Georgia Northern Railway, and have the answer to the Commission's questionnaire.

(Said document received in evidence as Exhibit No. 343.)

I also have a map of the Georgia Northern Railway.

(Said document received in evidence as Exhibit No. 344.)

The road connects at Boston, Georgia, with the Atlantic Coast Line Railroad. At Moultrie, Georgia, 29 miles from Boston, it connects with the Georgia & Florida, and the Atlanta Birmingham & Coast. At Albany, Georgia (Tr. 3568), 39 miles from Moultrie, it connects with the Atlantic Coast Line, the Central of Georgia, the Seaboard Air Line and the G. S. W. & G. It also connects with the G. A. S. & C. Railway at Bridgeboro, Georgia, and the Flint River & Northeastern at Ticknor, Georgia. On the map the road shown as the A. B. & A. is now the A. B. & C. We have [fol. 692] on our line oil mills, peanut mills, and compresses, and receive a haul on the articles manufactured from the raw products which we originate. Our competitors also get a portion of the manufactured articles. The raw products are hauled into cotton mills, packing plants and various other factories (Tr. 3569). Most of our industries are located at competitive points and the finished product goes partly to us and partly to our competitor, as we don't control the output. The raw products which we originate go to Albany and Moultrie. The manufactured products move to Carolina, Virginia, Georgia and Florida. The road was organized about February, 1895 and was constructed to various points between then and 1903. It was originally built to handle forest products which were its chief tonnage when it was completed (Tr. 3570). We serve 7 towns having a population of approximately 28,000. The road was built to handle forest products and develop the territory. There are no other roads in the same locality

except the Atlantic Coast Line at Boston and the Atlantic Coast Line, Central of Georgia, Seaboard and Georgia Southwestern & Gulf at Albany. Prior to the building of our railroad, our patrons had to go to those roads at the points they reached (Tr. 3571), an average distance of approximately 30 miles. From 1894 to 1902 it served the territory from Boston to Moultrie, and from 1903 to now it serves the territory from Boston to Albany, a distance of about 68 miles. It is 29 miles from Boston to Moultrie. We subscribe to the Car Service and Per Diem Rules Agreement and settle on per diem cars with car owners at the per diem rate. On mileage cars we settle with the owners at the mileage rates (Tr. 3572). I know that the officers of our railroad have been active in developing the territory served by it. They have taken a personal interest in the territory. It originally was a forest. They have [fol. 693] given the territory transportation facilities and have had personal interests and helped to bring in inhabitants and develop the country. We have a modern packing plant at Moultrie (Tr. 3573) and the officers put their personal funds into it and help to organize it as a community enterprise. Swift & Company now own it. The per diem rules are applied by us and our connections, except that with the Flint River & Northeastern Railroad we have allowed that road free time since August, 1927, amounting to the actual detention on it, both on our cars and foreign cars. The road is in bad shape financially, and we do not want to put it out of business. We do not recognize Paragraph B of Rule 6 as binding. If we pay foreign car owners the per diem, it is none of their business how we split it with our nonsubscriber connections (Tr. 3574). It is a matter of contract between the two parties, as divisions are. We are competent to decide what free time we may allow the Flint River & Northeastern and will not accept the dictation of other subscribers or that of the Association. We don't want to force the abandonment of a railroad that furnishes us traffic, and we allow the Flint River and Northeastern full free time. We are enabled to handle all the tonnage that the Flint River & Northeastern handles. We have 55 cars, of which about 40 are interchangeable, although we try to keep them on our line locally. When they are on other lines we expect to be paid the full

per diem rate (Tr. 3575). The allowance of free time to the Flint River & Northeastern is consistent, because while our cars are on that road our line is both a car owner and a car user. The Flint River road originates the traffic they give us. We perform switching service at our terminals and receive a reclaim from our connecting lines. We also allow reclaim of 2.54 days at Albany, 3½ days at Moultrie and 1.8 days at Boston. We allow those reclaims to our connections. We don't receive free time for bad weather when [fol. 694] cars cannot be loaded or unloaded (Tr. 3576). We apply standard demurrage rules, allow the consignee and shipper the usual 48 hours' free time together with Sundays, holidays and bad weather. Some shippers also have the average demurrage agreement. Such industries seldom have to pay any demurrage, whereas, without the average agreement they would pay considerable. Our chief commodity is products of agriculture from which we earn about $16 a car. Our average per diem per car is about $3.50 but that varies. The traffic on which we receive $16 a car is about 30% of our total traffic (Tr. 3577). On fertilizer the trunk line gets the same revenue as it would receive had the commodity originated at the junction point, without having to stand the usual terminal cost. The basis of the rates is the same on both lines and are made on combination over the junction. The Central of Georgia, for example, earns as much on fertilizer which we deliver to them as they would earn if it originated at Albany on their rails and they paid the terminal expenses and per diem. Our territory has developed into an agricultural country, producing all sorts of agricultural products that can be produced in the section (Tr. 3578). From 1910 to 1925 the average detention of cars on our line has ranged from 2.4 days up to 3.1 days. That is the average detention per loaded car. We operate two round-trips a day in freight service and on Sundays, so that our detention is at a minimum. During Federal control we were allowed 2 days free time, as we signed short line contract with the Director General. The same provisions are in effect now as during Federal control (Tr. 3579). Prior to Federal control, particularly during the melon season, our trunk line connections would let us park on our line the empty equipment necessary for the movement and would not charge the

tion, switching, etc., and on about 40% of our traffic the foreign lines act as intermediate or bridge carriers and escape the terminal revenue and detention. I have prepared a comparison of per diem and earnings on 143 inbound loads and 80 outbound loads, in January, May and June, 1927.

(Said document received in evidence as Exhibit No. 345).

On inbound tonnage we earn 21% of the revenue and paid 31% of the car detention. On the outbound loads we earned 18% of the revenue and on the total loads 20% of the revenue. On the outbound cars we paid 8% of our earnings to per diem, whereas the foreign line only paid out 4¾% (Tr. 3588). I have made a comparison of various car hire bases on the 223 cars covered by the last exhibit.

(Said document received in evidence as Exhibit No. 346.)

On these cars we paid $620 in straight per diem, whereas we would have paid $210 with 2 days' free time. I have prepared a statement showing the relation of freight revenue to per diem in 1925 and 1926.

(Said document received in evidence as Exhibit No. 347.) (Tr. 3589.)

The statement shows the gross revenue, gross freight revenue, per diem and per cent of per diem to freight revenue for each year; also the loaded car miles, empty car miles, total car miles and tons of revenue freight. The [fol. 698] Georgia Northern has no interest, direct or indirect, in the Flint River & Northeastern. I am Auditor for both roads only as a means of reducing expense, and also for the Georgia, Ashburn, Sylvester & Camilla. The three roads have no financial connection but the owners felt that it is cheaper to have the same officers operating all the roads (Tr. 3590). Exhibit 343 shows that we own 62 cars but some have been retired since 1925. Approximately 40 cars are adapted for interchange.

Cross-examination:

When Exhibit 343 was made up we had half a dozen coal cars which we used in interchange (Tr. 3591). In the answers to Questions 7 and 8 in Exhibit 343, the cars shown are all per diem cars and we can get average detention in

1925 by dividing the number of cars into the total number of days. The intermediate service referred to in Question 9 of Exhibit 343 is service, for instance, from the Central of Georgia over the Georgia Northern to Bridgeboro and the G. A. S. & C. to destination. On that traffic the Georgia Northern is an intermediate carrier (Tr. 3592). It would also be intermediate with the Flint River and Northeastern. The answer to question 10 in Exhibit 343 is incorrect as we did receive reclaim on terminal switching service in 1925. The reclaim about equaled the per diem payments. That is the basis of the reclaim. All of the 2,027 cars of local traffic shown in questions 11 and 12 of Exhibit 343 were not handled in foreign equipment (Tr. 3593). We try to keep our cars on our own line to handle local traffic but we do use some foreign equipment. The $22,884 shown in questions 18 and 19 of Exhibit 343 is the total per diem payment in 1925 but that must be in error as it evidently includes mileage cars (Tr. 3594).

Examiner Rice: As I understand it, he wants to check that statement and send in a revised statement.

Mr. Towner: Will this form for answers to questions 7 and 8 in Exhibit 343 be taken out and a correct page furnished?

[fol. 699] Mr. Streyer: Yes, sir.

The Witness: There can be no doubt that the amount shown in questions 18 and 19 is the actual per diem, less the reclaim, plus the mileage paid (Tr. 3595). The payment on mileage cars is in the wrong place. We show no car hire received in the answer to question 20 on Exhibit 343 because the amount we received was credited against the amount we paid and the amount paid is the net debit for the year. Therefore, the amount of $22,000 in questions 18 and 19 would be wrong (Tr. 3596). Some stockholders and bondholders of the Georgia Northern own some stock in the Flint River road. I don't know, however, to what extent that is true. The majority of the stocks and bonds are held by outsiders (Tr. 3599). There is a community of interest between the roads but they operate independently, making their own reports. The Flint River operates its own engines and we perform none of that service. Since August, 1923, we have allowed free time to the Flint River road on foreign cars. We pay the per diem to

the owning road and make the allowance to the Flint River (Tr. 3600). We charge them no per diem at all but assume it ourselves. We show as a per diem payment by our road the per diem paid while the cars were on the Flint River, but it does not affect our report, as at that time the Flint River reimbursed the Georgia Northern. The through arrangement was not in effect until August 1, 1927 (Tr. 3601). On foreign cars handled by the Flint River we did not occupy the joint status of car owner and car user. Our line and the Flint River are both car users. All of our interline traffic moves on divisions of through rates. The rates are made a certain arbitrary higher than the junction point rate. The lumber rate is probably 2¢ higher than the junction point rate (Tr. 3602). We get the 2¢, plus probably 2½¢ shrinkage. The melon rates are made similarly; we get close to 6¢ per hundred pounds because it is a division. [fol. 700] We have instances on our line where on interline traffic we receive divisions of through rates equal in amount to what we would receive if the car was handled locally on our railroad on a local charge between the same points (Tr. 3603). There are instances where our division equals the local rate. In those instances we get as much money out of the division as we get on the local tariff, but do not perform as much service (Tr. 3604). The fertilizer situation on our connections is heavier than our traffic, but in principle that situation is the same on our line as the fertilizer situation on our connections. On fertilizer the trunk line gets its local rate without performing the terminal service, and in our case we get our local rate without performing a terminal service. The average detention stated in my testimony should agree with the figures in Exhibit 343. The free time we want will result in it taking care of our per diem bills, but we want it for the purpose of equalizing the per diem burden between the short lines and the trunk lines (Tr. 3605). As a gatherer up of freight and a delivering and originating line, we bear the undue burden of the terminal service. The intermediate carrier should bear a pro rata share of that service. Where we perform an intermediate service, we would expect to apply that theory to our road and we would be willing to p y more than $1 in order to let the road at either end pay . (Tr. 3606). We would be willing to have that apply to our cars the same as foreign cars. Exhibit 343 shows as a reason for the free

time we want that our revenue is not sufficiently high to enable us to stand the expense, and we still urge that as a reason for wanting free time; also that we wish to more equally distribute the burden of car hire between users of the cars. Our rate of return from 1921 to 1925 ranged from 4.02% to 5.65% on our book value, and I made no investigation to determine whether or not our connections made that much money. We can afford to pay as much car hire as we pay but it isn't fair, as it does not equally divide the burden between the users of the cars (Tr. 3607). On Ex- [fol. 701] hibit 345 we arrived at the per diem on foreign lines on inbound cars by adding 2 days to the date at point of origin. On our road we included the per diem by taking the interchange date at the junction point and the date the car was released at destination or returned empty if it moved out empty. If an inbound car came to us and was unloaded by the consignee and held 3 or 4 days before it was handed back empty, we included in our per diem the per diem between the date of unloading and the date it was returned empty, but our service does not allow the cars to remain empty on our tracks. When a car is released empty it is delivered back to the connection empty unless ordered for reloading (Tr. 3608). If it is reloaded the figures are figured up to the date of release at interchange. On cars returned empty, however, the per diem accruing between the date of unloading and the date the car is returned is included in the per diem accruals charged to our road in Exhibit 345. The per diem on our road on outbound cars was ascertained in the same manner. If the car was delivered to us empty, the time started from the date of interchange until returned loaded. If it was a car that came to us loaded, the time was figured from the time the inbound load was released (Tr. 3609). Where we were the initial carrier and an empty car came to us for loading, we have included in our per diem accruals the per diem which accrued between the time we got the car and the time it was set for loading, the per diem that accrued while the car was being loaded and the per diem that accrued after the loading was completed and up to the time the load was interchanged outbound. Where shipments originated on a foreign line, I have only included the per diem that accrued while the car was being loaded and the per diem that accrued between the time of loading and the time of inter-

change with our road. Nothing was allowed to the trunk line connection for hauling the empty car to the place of loading. The distance hauled by us is so close and the time [fol. 702] is so small it is hardly calculable. Possibly the allowance of an additional day or so to the trunk lines would have made a better comparison (Tr. 3610). On Exhibit 345 the revenue shown is gross freight revenue. Most of the shipments were originated or terminated on our line, although a few might have been intermediate. It is our gross freight earnings out of which we take our operating expenses, but nothing is to be deducted for switching absorptions on anything of that kind. The trunk line earnings are on the same basis. We deducted nothing from our revenue and nothing from theirs (Tr. 3611). I could not say whether we did or not, but I did say our earnings were net. I don't recall any shortage of ventilated cars for watermelon loading. I have been with the Georgia Northern since 1923. I have heard that in 1921 or 1922 that there was such a shortage of those cars that some shippers were taking box cars and cutting ventilators in them. That happened as I understand it (Tr. 3612). I don't know of my own knowledge that that situation was cured by requiring the return of these cars empty during the watermelon season. I might find out what per diem accrued on these cars in 1926 between the time we received them and the date they were loaded. Most of the equipment we use during the season is melon cars and the per diem reports to our connections would practically all be on those cars (Tr. 3613). Also we might separate the per diem as between that which accrued prior to loading and that which accrued after loading. The watermelon season covers approximately 45 days (Tr. 3614). I understand that the Hand interests are great owners of stock in the Flint River road. The majority of the stock is owned by them and by the Ashburn interests (Tr. 3615). I know that the Atlantic Coast Line receives more than their local rate on many commodities, or some commodities originating at stations around Boston. They might receive 5¢ a hundred locally or 10¢ a hundred. Our local does not mean much to us when in the same territory [fol. 703] the trunk lines on many commodities are getting more than their locals. The long haul traffic is more profitable and the railroads handling it move the cars faster and earn more per day for the cars. The long haul reduces ter-

minal expenses to a minimum (Tr. 3616). The longer the haul the smaller the terminal expense per unit. The terminal expense would be the same but on the longer haul the prorata share of that expense with relation to revenue would be much smaller (Tr. 3617). I know that in our territory the trunk lines, especially the Atlantic Coast Line, have high divisions, which are higher than on any other part of the route. I cannot give any particular instances, as I am not a traffic man. I am talking about competitive points and Thomasville is not a local station (Tr. 3618). The melon movement during the average season amounts to about 2900 cars and extends over about 45 days in June and July. Generally the cars are loaded quickly. In showing the revenue to our line, there is nothing taken out for the terminal service at origin or destination. On our line we perform the switching ourselves (Tr. 3619). At Moultrie we are allowed between 2 and 3 days' reclaim, at Boston about 2 days and at Albany 2 days and a fraction. The amount is determined by the car accountants who get together and check the switching records for 6 months to see how many per diem days accrued on cars handled in terminal switching. That number is divided by the number of cars, which gives an average for the 6 months, and that average is used until one or other of the lines wants a recheck. For the succeeding period we are allowed to reclaim a certain amount, regardless of the detention. As long as all lines are satisfied with the reclaim, we probably won't make a check in 3 or 4 years. If one line thinks another is getting too much reclaim a check will probably be made in one year or two years (Tr. 3620). We do not attempt to check once a year. We get a switching charge on cars switched by us of $2.25 a car. That is a reciprocal rate which we pay and they pay.

[fol. 704] CHARLES H. HAYNES was called as a witness and, being duly sworn, testified as follows:

I am President of the Cliffside Railroad (Tr. 3621). The road connects with the S. A. L. at Cliffside Junction, North Carolina and has 3 miles of main line southeast to a stub-

end at Cliffside. We have but two stations aside from the junction, Avondale and Cliffside. 75% of our tonnage is to and from Cliffside and the balance to and from Avondale. At these points we serve cotton piece goods factories, fertilizer, gasoline storage station and the general transportation needs of the towns. Our present basis of car hire is a straight demurrage basis, the same as that given shippers by carriers. It has been in effect from 1905 to the beginning of Federal control and also since September 1, 1920. We had an argument with the Director General as to settlement during Federal control, but I think it was settled on a demurrage basis (Tr. 3622). We have practically been on that basis since 1905. After Federal control the S. A. L. billed us on a per diem basis. We took it up with the Vice President. It hung fire until June, 1922 when the demurrage basis was restored and made retroactive to September 1, 1920. I have the letter to that effect.

(Said document received in evidence as Exhibit No. 348.)

I was not clear that we would be allowed 4 days on a car loaded in and loaded out, so I saw the official of the S. A. L. and he wrote me a letter confirming that basis. I have a copy of that letter.

(Said document received in evidence as Exhibit No. 349.) (Tr. 3623.)

When Exhibit 12 was received in this case, I wrote to the official of the S. A. L. asking him to sign a letter saying that our demurrage basis was satisfactory. I have a copy of the letter I wrote.

(Said document received in evidence as Exhibit No. 350.)

To this letter I received a reply from the official of the S. A. L. saying that the arrangement was mutually satisfactory (Tr. 3624). In the letter it was said that the pur-
[fol. 705] pose of my letter was not clear, but that it was sufficient for me to state in the case what my arrangement with the Seaboard is, and that so far as I knew neither party is dissatisfied as there are times when it was well to let a sleeping dog lie. I have prepared a statement of our car hire for 1926.

(Said document received in evidence as Exhibit No. 351.)

It shows that we handled 1,356 cars and about 1,956 carloads, of which 1,212 were inbound and 744 were outbound. We paid $85 to the S. A. L. in car hire and collected the same amount in demurrage from our shippers (Tr. 3625). On the per diem basis our car hire would have been $2,034, an increase of $1,949, amounting to 5.69% of our gross freight revenue of $34,241.91. Of the 1,356 cars interchanged to us 42% were S. A. L. cars. About 60% of our tonnage is inbound and consists principally of cotton, coal, fertilizer and merchandise. The 40% outbound is principally manufactured cotton piece goods. I have a statement of our financial condition for 1926.

(Said document received in evidence as Exhibit No. 352.)

We apply the regular demurrage agreement to our patrons. We have no complaint in this case, as we are satisfied with our present car hire basis, and you will observe that the S. A. L. is also (Tr. 3626). We appear here because the A. R. A. is endeavoring to outlaw our arrangement, and we ask that Paragraph "B" of Rule 6 be cancelled. I have a statement of our revenues and expenses for 1926.

(Said document received in evidence as Exhibit No. 353.)

This statement does not show our car hire payments and demurrage collections, as generally they are equal and we carry them in a special account. They should appear on our income and expense account and will be so handled hereafter. No shipper has financial control of the railroad, but the Cliffside Mills furnish about 90% of its tonnage, and the railroad stockholders own stock in the Cliffside Mills. A number of stockholders in the Mills, however, do not own stock in the railroad. I am President of both companies, [fol. 706] but do not own a majority of the stock in either (Tr. 3626-a).

Cross-examination:

The Mr. Forrester to whom Exhibit 348 was sent is Traffic Manager for the railroad and is also a Traffic Manager for the Cliffside Mills. The number of cars shown in Exhibit 351 is actually and I secured the amount under straight per diem by multiplying the number of cars by $1.50. We secured our average detention of one day and a half by getting actual detention for 3 months and we worked it out

from that (Tr. 3627). For the 3-month period the detention was about a day and a half. The number of cars handled inbound and outbound are loads, and the total of the two would not necessarily show the total number of cars we had. Exhibit 352 is a balance sheet and Exhibit 353 shows the detail of expenditure and revenue. They both cover the same period. We have no freight equipment but own three engines (Tr. 3628). We have no average agreement with the Seaboard for computing car hire. We get 2 days' free time on each load in and out and pay regular demurrage thereafter. That is the same basis we extend to shippers and consignees, as we do not allow them to settle under the average agreement. I am President of both the Cliffside Railroad and the Cliffside Mills. Two or three of the officers of the railroad are also officers of the Mill but in different capacities (Tr. 3629). It is substantially true to say that the officers of the railroad are also officers of the mill and all of the stock of the railroad road is owned by the stockholders in the mills, although some of the stockholders in the mills do not own stock in the railroad. The Mill Company has one mill at Cliffside and one at Avondale and approximately 90% of our traffic is for that company, 75% from Cliffside and 25% from Avondale (Tr. 3630). On Exhibit 353 the figure of $5,822.83 represents our net railway operating income for 1926. I don't recall the corresponding figure for 1925, but it is very near the same. We paid out $85 in demurrage to the Seaboard [fol. 707] in 1926 and collected the same amount in demurrage from shippers (Tr. 3631). The $5 indicated on Exhibit 353 is the part that had not been sent to the Seaboard. It usually works out that we turn over to the Seaboard the demurrage we collect from our shippers and consignees. We allow 48 hours' free time to shippers and then apply the demurrage schedule that the Seaboard applies (Tr. 3632). I do not recall what basis was in effect during Federal control, but as I remember it our business was adjusted on a demurrage basis. Our railroad is entirely within North Carolina. We have 3 miles of main line and total mileage of 7 and 8 miles. Our branch lines and spurs are a little over 4 miles. We connect with the Seaboard only (Tr. 3633) at Cliffside Junction. Our line runs from Cliffside Junction to Avondale. It is a hilly and

mountainous country and the grades are reasonably heavy. We carry 2 or 3 cars at a time from Alton to Cliffside but coming down we carry 10 or 12. When we go to the mill we are going away from the connection with the Seaboard and it is up grade coming to the Seaboard. We can only haul 2 or 3 loaded cars in one train (Tr. 3634) because of the small locomotives and heavy grades. I think our locomotive weighs around 40 tons, but I don't know what its tractive power is. We have more inbound traffic than outbound and do no terminal switching. The towns we serve have a population of about 3,700 and the country around them is thickly settled. We file our income statements with the Interstate Commerce Commission (Tr. 3635). We participate in the Seaboard's tariffs on all traffic and receive a division of the rate on such traffic. The station at Cliffside takes the junction point rate and our shippers have the same rates as shippers at the junction point and the same as other mills in that vicinity on the Seaboard. The Seaboard shrinks its rates to that extent (Tr. 3636). I don't think the switching we perform at the mills is terminal switching; [fol. 708] that is a service performed on the line haul rate. We have no terminal switching but carry the cars to the mills or wherever the business is.

A. P. CLAPP was called as a witness and, being duly sworn, testified as follows (Tr. 3637):

I am Chief Clerk to the General Manager of the Deering Southwestern Railway and several other roads. I have been connected with the Railroad for 13 or 15 years and before that had 8 or 9 years of railroad and traffic experience. The Deering Southwestern operates a steam road in southeastern Missouri, between Carathersville and Hornersville (Tr. 3638). It is a common carrier in state and interstate commerce and handles United States mail. It is an independent carrier under the management and control of its own officers and directors and was incorporated in June, 1903 with capital stock of $400,000. The stock is held for the benefit of the International Harvester Company which also controls the Wisconsin Lumber Company, owning timber along the right of way and which is the largest shipper on the road.

equipment to us until placed for loading. That relieved us of having to pay the day or two for bringing in and loading. [fol. 695] That ceased on January 1, 1918, and the 2 days' free time allowed by the Director General ceased on February 29, 1920 (Tr. 3580). In the melon season we handle about 2,000 cars of melons within 30 or 45 days and accumulate cars in advance to have them available. At the present time we have to stand the extra days holding the equipment ready for the movement. If this was the melon season and we had a prospect of loading day after tomorrow, we would take the cars out today or tomorrow and place them. We would now have to pay per diem on them as soon as we leave the junction. Formerly we took them out and probably would not have per diem start until day after tomorrow. It is necessary to accumulate cars to furnish prompt service, as it is a perishable product. That is the practice of melon carrying railroads. We now hold cars under per diem from the time we take them to the junction until the loading begins, but try to figure our needs sufficiently so as not to hold them over a couple of days (Tr. 3581). We have to figure our needs about 48 hours ahead. It sometimes happens that if we are going to load the next day we go down after midnight and get the cars, have them loaded the next day and send them back the same day. Usually, however, we take them out as the trunk line gathers them up at the junction and brings them in. We notify them in advance of the prospective loading during the following week, and they begin to accumulate the cars and expect us to take them when they bring them to the junction. If we don't take them they are liable to go to some other point and embarrass us in loading. The melons must be loaded on the day they are ready for movement, and if not loaded and left in the sun they become damaged (Tr. 3582). It is not unusual for us to have 200 cars a day on our 67 miles of railroad. Formerly we had the cars but per diem did not start until the loading was commenced. [fol. 696] Now we have to take the cars 24 to 48 hours ahead of load and pay the per diem from the time we receive them. The line haul traffic cannot stand delay. Taking the cars in advance of loading takes approximately 2 to 3 days, considering the placing, etc. The movement to Chicago is considered fourth morning delivery (Tr. 3583).

If we consider fifth morning delivery with 2 delivery days for the foreign line and our 3 days for loading, the equipment is needed about 9 days in the movement. We pay for 3 days, or one-third, and get about $16 a car. The traffic delivered at destination amounts to about $225, so the foreign line gets more than $200 and pays approximately $6 per diem. This commodity is reconsigned and goes to all points east and west. I presume the melon cars are moved back empty and the trunk line would necessarily have to pay the per diem on it, but I imagine that a lot of them are used in loaded movement. You can put anything in them and the trunk lines can use them back under load (Tr. 3584). I cannot say that 90% of them come back empty. They are good merchandise cars, and I don't know what happens to them on the way back. They are only ordinary box cars with ventilation in the end. Our connections park their own equipment for our benefit at Albany, two or three weeks ahead of time. That equipment is idle more or less during the dull period of the year. That class of equipment is used the year around for merchandise for any loading a box car can be used for (Tr. 3585). At the beginning of the year the trunk lines begin to release them as far as possible and gather them up for that movement. The railroad accumulates these cars. I cannot say that this is in accordance with the requirement of the Association to return them empty, but I know that it is the practice to get them up. Before the A. R. A. was active in car handling, I know that the cars weren't handled so actively and we experienced some car shortages (Tr. 3586). We and our connec- [fol. 697] tions look after the movement ourselves. I assume that the A. R. A. does that at the present time for all traffic. From 1910 to 1925 our freight earnings have increased 176%. In the same period our per diem has increased 346% and per diem rates have increased 323%. Our divisions have not been increased to cover the rising per diem rates. We are not satisfied with the per diem rules and ask that we be allowed 2 days' free time with per diem thereafter. This was the basis during Federal control and has national recognition. We think that is fair because we are a terminal and originating carrier and the day basis of computing car hire is unfair to us (Tr. 3587). We have all the terminal delays such as weighing, inspec-

It is a Class II carrier, and is a party to the Tap Line decision and subject to the orders in that case (Tr. 3639). Our main line is 32.9 miles long and serve 3.56 miles of yard tracks and sidings, or a total of 36.46 miles. It connects with the Frisco at Caruthersville and at Blazer, and with the Cotton Belt at Hornersville. It owns 3 locomotives, 2 passenger cars, 1 passenger motor rail car, 1 caboose and 94 freight cars, 34 of which are suitable for interchange with connecting railroads. The rail is 60 pounds to 80 pounds. The average number of employees is 50 (Tr. 3640). The road belongs to the American Short Line Railroad Association and is an associate member of the American Railway Association. It also subscribes to the car service and [fol. 709] per diem rules agreement of the A. R. A. and the car interchange agreement, and belongs to other bureaus. It has agency stations at 5 points. We have a repair shop at Deering and repair practically all had order cars received (Tr. 3641). I have a map of the road.

(Said document received in evidence as Exhibit No. 354.)

This map was made sometime ago and is not now accurate. The line between Ward Avenue and the Caruthersville station of the Frisco belongs to the Frisco and is no longer used by us. Also the connection shown with the Frisco, just east of Deering, has not been in use for a number of years. The region marked "Little River Overflow" is now drained and suitable for agriculture (Tr. 3642). I have prepared a table of distances between stations on the road.

(Said document received in evidence as Exhibit No. 355.)

On this exhibit the stations and station to station mileages are shown. The road is located in Pemiscot and Dunklin counties, having an area of 1,024 square miles and a population in 1920 of 64,600. The ground is flat with water level grades. The soil is fertile and has a rich agricultural future (Tr. 3643). The territory at the east end of the road is devoted to agriculture, while the west end is devoted chiefly to lumbering, partly to agriculture. The present agricultural tonnage is produced from a limited area, but the entire country is now drained and the agricultural development can take place immediately. It has been said that the agricultural tonnage should very greatly increase. Farms

are being sold on very liberal terms and long payments (Tr. 3644). The towns shown on the map have an estimated present population of 9,000. Caruthersville is also served by the Frisco and Hornersville is also served by the Cotton Belt. Caruthersville has about 37 carload shippers and being on the river will become a port of some importance. Some towns west of Caruthersville are also important traf- [fol. 710] fic points. At other points we serve cotton gins, lumber companies and stave mills. At Hornersville there are 12 carload shippers (Tr. 3645). I have prepared a statement showing the various industries and the character of the business they do.

(Said document received in evidence as Exhibit No. 356.)

The road engages in passenger, mail and freight service. In 1925 the gross revenue was $140,158.97, of which $16,069.04 was passenger revenue, $1,425 mail revenue; and $122,664.93 freight revenue. The passenger traffic is entirely local and in 1925 34,431 passengers were carried; mail is carried under Government contract. The freight traffic is principally forest products with lesser tonnages of agricultural products, and manufacturers. In freight service we perform local terminal switching line haul and intermediate service. Our local traffic is chiefly logs and products consumed in small towns (Tr. 3646). In 1925, 2,899 carloads of logs were transported locally to mills. When this traffic is handled to or from industries on the Frisco we absorb that road's switching charges and give reclaim. Three log trucks are about the equivalent of one carload. At Caruthersville, terminal switching is performed on Frisco traffic, the Frisco absorbing our switching charge and paying our reclaim. The outbound line haul service is about 7 times greater than the inbound tonnage and consists principally of forest and agricultural products. The inbound tonnage is the products of mines, manufacturers and agriculture. On a limited number of cars we perform intermediate line haul service between the Frisco and the Cotton Belt (Tr. 3647). I have prepared a statement of the cars and tonnage handled in 1924 and 1925.

(Said document received in evidence as Exhibit No. 357.)

This statement includes all interline and local freight, and the figures are taken from the annual reports to the

Commission. In 1925 we had 8,698 logging trucks which would be equivalent to 2,899 standard cars (Tr. 3648). We made a study of the interline carload freight handled in per [fol. 711] diem cars in December, 1926. The average haul on inbound traffic was 273.62 miles, our connections having a haul of 255.57 miles and our haul being 18.05 miles or 6.5% of the total. The study covered all inbound carloads in the month shown. Our gross revenue on this traffic was $886.61 and on the 27 cars we paid $131 per diem or 14.78% of our gross revenue. Our average per diem per car was $4.852. In the same month 205 carloads were shipped outbound in foreign cars. The average haul on them was 275 miles, the foreign lines hauling them 260.98 miles and we hauling them 14.02 miles, or 5.12% of the total. Our gross revenue on these cars was $4001.24 and our per diem was $643, or 16.07% of the total. The average per diem per car was $3.136 (Tr. 3649). The outbound cars were all of the interline loads handled in that month in foreign cars (Tr. 3650). In 1925 our forest products constituted 95.5% of our total tonnage originated and 89.3% of the total tonnage handled. About 75% of our total traffic was for the controlling industry (Tr. 3651) and of the total carloads inbound and outbound about 60% was for the controlling industry. We have no record of paying car hire prior to 1911. On January 1, 1911, we signed the A. R. A. Per Diem Rules Agreement and reciprocal reclaim was established in 1922 between the Frisco and our road at Caruthersville under the Denver Plan. In 1925, $10,264.45 per diem accrued on foreign cars. $10,852.90 was actually paid, including mileage of 15,544 miles on mileage cars. In the same year we received $417.75 per diem (Tr. 3652). The exhibits show that our railroad detention of cars is comparatively low. We receive practically no cars empty and return them empty. That seldom happens. Of the cars received loaded and returned empty, most of them were of the hopper bottom type which could not be used. We give service at least once a day. I have prepared a series of exhibits showing cars handled in and out and the detention thereon, and fur- [fol. 712] ther segregating detention as between carriers and industries, for 4 months of 1925. My first statement shows the total cars handled in and out and the detention thereon, including detention by carriers and industries (Tr. 3653).

(Said document received in evidence as Exhibit No. 358.)

The statement shows 824 cars handled with average detention by shippers and carriers of 3.73 days. The 824 represents carloads, and the detention is only on interline foreign per diem cars (Tr. 3654). Of the 117 inbound cars, 25 were handled for the Cotton Belt with detention of 81 days. 92 were handled for the Frisco with detention of 368 days. Of outbound cars 283 to the Cotton Belt were detained 1,059 days and 424 to the Frisco were detained 1568 days. Of the total cars 308 were for the Cotton Belt with average detention of 3.7 days and 516 were for the Frisco with average detention of 3.75 days. I have also prepared a statement segregating detention on our road as between the railroad and the industries.

(Said document received in evidence as Exhibit No. 359.)

Our average detention on 824 cars was 1.01 days, while the average industrial detention was 2.72 days (Tr. 3655). I have also prepared a statement of the same cars to and from industries, showing total detention inbound and outbound. The exhibits cover all foreign cars which moved in the months listed.

(Said document received in evidence as Exhibit No. 360.)

I have also prepared a statement showing as to these same cars the detention by all industries and the detention and cars as between the controlling industries and other industries (Tr. 3656).

(Said document received in evidence as Exhibit No. 361.)

During the 4 months shown, the controlling industry handled 470 cars with average detention of 2.63 days per car. The non-affiliated industries handled 354 cars with average detention of 2.84 days per car. I have also prepared a statement showing foreign per diem cars used in [fol. 713] interline merchandise service (Tr. 3657).

(Said document received in evidence as Exhibit No. 362.)

The statement shows that the average detention on 147 cars was 1.59 days per car. I have also prepared a statement for the same 4 months showing company material received in foreign per diem cars.

(Said document received in evidence as Exhibit No. 363.)

We handled 16 cars in this service with average detention of 4 days per car. I have also prepared a statement for the same 4 months, showing foreign per diem cars used in local service (Tr. 3658).

(Said document received in evidence as Exhibit No. 364.)

On Exhibit 363 the detention of 4 days on 16 cars represents railroad detention on cars while loading company material. If they were sent back empty the detention is included up to the time of interchange, and if to be unloaded up to the time of being unloaded. Exhibit 364 shows 18 cars detained 125 days on a- average of 6.94 days per car. Of this amount the railroad detention was 1.61 days per car and the industrial detention 5.33 days per car. Only 18 foreign per diem cars were used in local service by us in the 4 months (Tr. 3659). I have also prepared a statement showing the foreign per diem cars handled in terminal switching service at Caruthersville for the Frisco.

(Said document received in evidence as Exhibit No. 365.)

On the 6 cars handled in this service the average detention was 2.17 days per car. In 1925 we received $532.80 gross revenue from terminal switching service. We paid per diem of $594 and reclaimed the same amount. I have also prepared a statement of interline foreign per diem cars handled in intermediate service in September and December, 1925, and March and June, 1926.

(Said document received in evidence as Exhibit No. 366.) (Tr. 3660.)

We used two months in 1926, as this traffic did not start until August, 1925. The detention of .77 days is practically [fol. 714] representative. The service on Exhibit 366 is a line haul service between the two connections. I have prepared a statement of per diem and mileage paid by the road and reclaim paid and received during the same 4 months of 1925.

(Said document received in evidence as Exhibit No. 367.) (Tr. 3661.)

The service referred to in Exhibit 367 is terminal switching service at Caruthersville for the Frisco. The $777 paid

in March is per diem paid on all per diem cars. The first three columns refer to all cars, and the last two refer to terminal service at Caruthersville (Tr. 3662). We paid $73 to the Frisco for terminal switching in March, 1925 and received $4 in the same period for terminal switching we performed for it. I have also prepared a statement for the same 4 months of 1925, showing the local carload traffic in our own cars.

(Said document received in evidence as Exhibit 368.)

The average detention on the 173 cars shown was 4.01 days per car. It is not necessary to compute the detention of local trucks because they are never detained more than a fraction of a day. Our exhibits show 18 foreign cars used in local service and 173 of our own cars in the same service, without considering the log trucks (Tr. 3663). This exhibit shows the average railroad and shipper detention. The shipper detention shown is the average. It includes detention at point of origin and destination; and includes only shipper detention, I think. I have prepared a statement of the foreign mileage cars which we handled in 1925 and the detention, thereon.

(Said document received in evidence as Exhibit No. 369.)

The 178 cars shown were detained 520 days, an average of 2.92 days per car (Tr. 3664). The average haul per car was 47.9 miles. We assess demurrage under the National Demurrage Rules. In 1925 $126 demurrage accrued against the Wisconsin Lumber Company and $139 against all other industries. The controlling industry operates under the [fol. 715] average agreement and the other industries under the straight demurrage plan. I have no figures on the cost of administering the car hire and demurrage rules on our road. Our road publishes local class and commodity rates covering local traffic (Tr. 3665). They are substantially higher than the divisions on interline traffic. Through rates are published on all traffic to or from our points and on some of our intermediate line haul traffic. Our stations are given the junction point rates of the Frisco at Blazer, except in certain instances. I have prepared an exhibit showing the situation.

(Said document received in evidence as Exhibit No. 370.) (Tr. 3666.)

The exhibit shows that the divisions accorded to our road were added to the Blazer rate of the Frisco. The rate of 6½¢ shown to Chaffee, Missouri, applies from all of the 4 or 5 producing stations. Our rate via Blazer to Chaffee is 6½¢ and from Blazer to Chaffee is only 3½¢. The application of the Frisco rate is contingent upon the reshipment of the manufactured product (Tr. 3667). The distance from Blazer to Chaffee is shorter than the other route through Chaffee. The rates are mileage rates in blocks and would apply from any point of origin. The 3½¢ rate is a transit rate and the other rate is made by adding a factor to the transit rate. That rate was originally based on our tap line division as a factor, plus a Frisco transit rate to the junction. The transit rate to Chaffee is 4¢ when the traffic comes off our line and 3½¢ in the other case, because both factors were published as a through rate and under the percentage advances and reductions of that rate (Tr. 3668) a little difference was produced by disposing of fractions. Our division is in excess of the transit rate of the Frisco, which gets slightly less under its local rate than it does for its division. Neither rate is a local rate but is a transit arrangement contingent on reshipment. If a certain per- [fol. 716] centage of the inbound tonnage is not reshipped outbound the higher local rates apply. The particular tonnage is not identified but gross tonnage is checked against reshipped tonnage (Tr. 3669). The accounts are balanced about once a year under the tariff, and the procedure makes it not a local rate but a transit rate. In our territory it is very exceptional to have a division higher than a local rate on the same haul. The local rate is ordinarily higher. Our road is a party to the Tap Line Case and its divisions on forest products are fixed on the basis prescribed by the Commission. On other commodities divisions are fixed by agreement (Tr. 3670). I have a statement showing our local rates on forest products and the divisions we receive under the Tap Line Case.

(Said document received in evidence as Exhibit No. 371.)

The statement shows that our local rates are substantially higher in all cases than the divisions under the Commission's order. The divisions are those fixed under supple-

mental orders (Tr. 3671). Since 1911 we have paid straight per diem without free time or reclaim, except the reclaim on the cars handled in terminal switching at Caruthersville. Other tap lines have done the same, but many have been accorded more favorable car hire arrangements. Some settle under the Birmingham Southern Rules, others are allowed certain free time, and others pay no car hire at all. I have a statement based on Exhibit 12, showing the tap lines, and set forth as settling under the Birmingham Southern Rules of 3 days (Tr. 3672).

(Said document received in evidence as Exhibit No. 372.)

It shows 9 tap lines which receive 3 days free time with a modified demurrage basis thereafter. Five of them were parties to the Tap Line Case in 1912 and doubtless there are other tap lines settling under the Birmingham Southern Rules. I got my information from Mr. Crawford. The Red River & Gulf Road gets free time or reclaim and was a [fol. 717] party to the original Tap Line Case (Tr. 3673). Doubtless others in the same list are tap lines. Exhibit 12 also shows three tap lines which have a straight demurrage basis of car hire with 2 days' free time. The same exhibit shows 4 tap lines which pay neither per diem nor demurrage and do not collect demurrage from the industry served (Tr. 3674). In those cases the demurrage is assessed against the industry to the connecting line. The source of my information is Exhibit No. 12. The financial history of our road is set forth in the Commission's valuation report on our road at 103 I. C. C. 360. Our final value was $453,000 and on valuation date we had liabilities amounting to $56,717.34 in excess of assets. On December 31, 1925, our liabilities exceeded our assets by $229,490.11. The road has never paid a dividend on its capital stock. I have prepared a financial statement of the road for the years 1910 to 1926, inclusive, and the first 8 months of 1927 (Tr. 3675).

(Said document received in evidence as Exhibit No. 373.)

During the last 17 years and 8 months we had a deficit in all but 4 years. Our total net deficit has been $234,287.70 or an average annual deficit of $13,261.56. Those figures are net railway operating income deficits. I have prepared a statement showing our gross revenue, net railway oper-

ating income, standard return, car hire cost, etc. for the years 1920 to 1925, inclusive (Tr. 3676).

(Said document received in evidence as Exhibit 374.)

This exhibit varies from the previous exhibit in that the standard return is used for net railway operating income. In the last exhibit the net income or deficit is based on the regular rate. Also another difference is in the net income appearing in the figures for the years 1920 and 1921. On the exhibit no allowance is made for the sums received from the United States Railroad Administration. Our last [fol. 718] exhibit shows that in 1925 our percentage of car hire to gross freight revenue was 8.98% and in 1920 was 13.28%. Our study of December, 1926, shows that per diem paid on foreign cars used in interline service on our road varies from 14.78% to 16.07% of the total gross revenue received from such traffic (Tr. 3677). We think that we should be accorded relief in some form. If the present basis of car hire settlement remains we would prefer 3 days Free time under the Birmingham Southern Rules or reclaim equal to our average detention. It would also be all right to use the plant facility basis where the trunk line assesses demurrage against the industry and no car hire against the railroad. We can use the money. If the Commission does not approve these plans, there should be some readjustment of our divisions as they are restricted on our principal tonnage by order of the Commission (Tr. 3678).

Cross-examination:

On my last exhibit the words "Standard return" mean a form that was used in some Commission reports and prescribed by the Commission. I don't know how the deficit in net railway operating income in 1920 was arrived at. In 1925, the standard return was $16,600.58. To that was added the income from unfunded securities (Tr. 3679) and accounts, making a total of $16,726.33. From that was deducted interest on funded debt and unfunded debt of $606.39, making the actual return of $16,119.94. Exhibit 373 shows the facts with regard to our net railway operating income as shown in the annual report. The Denver plan of reclaim is the actual detention basis on per diem cars switched up to 7 days on cars received loaded and returned empty

or the reverse. 10 days is the maximum allowed on a double load in one car and an arbitrary of 3 days on picked up and diverted cars. At the end of the month we find what cars we had in terminal switching service and the number of days each car was detained (Tr. 3680). If a car loaded both ways was detained 12 days, we are allowed [fol. 719] 10 days reclaim and pay the other 2 days, and on cars loaded one way we reclaimed all per diem paid not exceeding 7 days per car. The Frisco advised us that they used this plan all over the territory. I have never seen the plan in written form (Tr. 3681).

A. E. EDGE was called as a witness and, being duly sworn, testified as follows:

I am General Manager of the Alabama & Western Florida Railway which is No. 4 in Florida on Exhibit 319. The road runs south from Chipley, Florida, to Southport and connects at Chipley with the Louisville & Nashville Railroad. Our mileage is 38 miles and in addition there are 3.97 miles of side track. Our Company has commenced operation in 1926 under purchase from the Receiver of the Birmingham, Columbus & St. Andrews Railway (Tr. 3682), I have been with both companies a little over 9 years. The Birmingham, Columbus & St. Andrews was in the hands of a receiver from December, 1908 until September, 1926. The Company never made any money and operated on receivers' certificates. When the court would not grant us authority to issue more certificates, the road was sold to the organizer of the present company. Our principal commodities are lumber, naval stores and wood. No particular industry controls the railroad (Tr. 3683), and no appreciable amount of our stock is owned by an industry. Our road is the only short line between Pensacola and Chipley. We serve a populatiton of around 5,000 in a total area of 250 square miles. Our timber has not yet been removed and the country fully developed. We do not subscribe to the per diem rules. We have a mile or more of side track at Chipley (Tr. 3684). About 75% of our tonnage is interline. We own 6 freight cars used in our local business. We use no foreign cars in local business. Our connections

[fol. 720] participate in the road haul on all foreign cars used by us. With one exception, we serve exclusively all the industries at Chipley. One turpentine station is on the L. & N. (Tr. 3685). After 1920, on cars switched at Chipley for the L. & N. we received $2.50 a car until July, 1922. Thereafter we received $2.25 per car and were paying per diem at the rate of $1 a day, leaving practically no net revenue. We were seldom able to get *then* cars back in less than 2 days and many took more time. We tried to get an allowance from the L. & N. but were unsuccessful. In 1925 they agreed to pay us $5 per car switching charge. This became effective on interstate traffic in November, 1925, the *the* Railroad Commission of Florida refused permission to publish it on intrastate traffic (Tr. 3686). Since 1925 our switching charge on interstate traffic is $5 a car and on intrastate traffic $2.25 a car without reclaim. Our interstate and intrastate business is about fifty-fifty, and the switching charge of $5 is abnormally high by comparison with other towns the size of Chipley. The average charge for similar service is $2.25. We feel that the $2.25 charge is too low and that we should be allowed a reclaim and that the old company should be allowed a reclaim for years past. Had it not been that we saw our shippers, we probably would have had a complaint before the Commission on the interstate $5 charge. We tried to get a reclaim from the L. & N. but it was refused (Tr. 3687). Mr. Streyer had some correspondence with the Superintendent of Transportation of the L. & N. in 1925. In August, 1925, Mr. Streyer wrote to the L. & N. official, calling attention to the switching service we performed at Shipley and the fact that we received no reclaim, although the cars were delivered to the L. & N. He pointed out that we handled 16 cars in June and per diem accumulated on them for 45 days, so that we were in the position of performing the switching service for $2.25 (Tr. 3688) and paying out the [fol. 721] entire amount for per diem, thus performing the service without any return. He then asked that the L. & N. allow a reclaim of a few days and make it retroactive, since we had been switching cars for months at a loss, as the per diem paid offset the amount received for switching service. A reply dated August 21, 1925 was received (Tr. 3689), in which it was said that since the Birmingham, Columbus & St. Andrews was not a member of the per diem rules agree-

ment, the L. & N, was to arrange car rentals under Per Diem Rule 6, Paragraph "B", which requires that subscribers shall make settlement with nonsubscribers at the established per diem rate without free time allowance and without reclaim. He concluded by stating that it would seem advisable for us to apply for membership in the per diem agreement. On interstate traffic we are hopeless as the Railroad Commission will not allow us to increase our switching charge and the L. & N. will not give us a reclaim. We ask that we be allowed reclaim upon these cars with a minimum of 2 days, and that on cars handled in connection with the L. & N. we be allowed at least 2 days (Tr. 3690), and that on cars handled by both roads in line haul service we be allowed 2 days' free time. We also want the reclaim made retroactive to September 25, 1926. We did not apply for membership in the per diem agreement, as I do practically all of the work on the road myself. I figure that the extra cost would be more than the amount of the reclaim.

Cross-examination:

We now pay straight per diem on foreign cars which we use. We receive a switching allowance of $2.25 on cars handled in terminal switching (Tr. 3691). The L. & N. does not absorb that charge and it is in addition to the rate. The L. & N. knew nothing about the increase of our switching charge to $5. We handled that with the shippers. We get that charge net on interstate traffic. The increase of $2.75 was calculated to make us whole on the per diem. [fol. 722] That was the purpose of the increase. The Florida Commission has not let us make the increase on intrastate traffic and these two classes of traffic are what we are tied up on on terminal switching (Tr. 3692). I have a statement showing the financial operations of our railroad and the Birmingham, Columbus & St. Andrews for the year 1926.

(Said document received in evidence as Exhibit No. 375.)

The cost of keeping records of detention was not what kept us from joining the A. R. A. The principal objection was notifying the different lines of the receipt and return of cars (Tr. 3693). That could have been overcome if we

commodities and would cover 60% of our business. We settle with the Southern Railway direct on all foreign cars on a straight per diem basis and have done so since 1925 when we withdrew our subscription to the per diem rules agreement. We have previously been subscribers since 1902. We pay mileage on mileage cars at 1½¢ to 2¢ per mile, or 30¢ and 40¢ a car. During Federal control we received the waiver agreement and paid per diem with 2 days' free time (Tr. 3705). Four of our shippers have the average demurrage agreement. This works to our disad-[fol. 725] vantage for if they have a credit of one day they can apply that on a car held one day over. It gives maximum free time to a large shipper; whereas, a man not having the average agreement unloads his car within 24 hours without getting any credit. We collect demurrage from 7 A. M. the day after the car is placed, with allowances for Sundays, holidays and rainy weather. I have prepared a statement of 115 carloads handled in February, 1927. 52% of the cars were Southern cars (Tr. 3706).

(Said document received in evidence as Exhibit No. 377.)

We are satisfied with our present basis of car hire on mileage cars, but not on per diem cars. The time basis allocating cost of car ownership is unfair between the Southern and our line as car users because we have to stand the terminal detention. We want per diem with 2 days free time, which was recognized by the Railroad Administration and given us during Federal control. I have a statement showing the difference between per diem and 2 days free time on 115 cars handled in February, 1927. We paid $244 and would have paid $81 with 2 days free (Tr. 3707).

(Said document received in evidence as Exhibit No. 378.)

On the straight demurrage basis we would have paid $193. From 1910 to 1925 our freight earnings increased 338%. In the same period our per diem increased 447%, a greater ratio of increase than our increase in gross freight earnings (Tr. 3708). We feel that the increase in per diem should not be greater than the increase in gross earnings, since they have increased only 300% since the road was built. When the road was built there was only a few stores at Pickens. Now they have cotton mill and saw mills have come on the road. The territory has developed agricul-

turally and additional highways have been built. In 1926 our per diem was $2,863 or 7.42% of our revenues which amounted to $38,574. We cancelled our subscription to the per diem rules because it was too much trouble and expense [fol. 726] to make daily reports and monthly settlements to all car owners (Tr. 3709). Since we answered the questionnaire the Appalachian Lumber Company has located on our line at Pickens. They will require 10 cars a day which will materially increase our per diem expense. All our traffic is interline. We own no cars and one locomotive. On all of our business our connections participate in hauling the revenue. We want 2 days' free time with per diem thereafter. In the questionnaire we asked for 2 days' free time with demurrage, but conditions have changed as the new industry will increase our expense (Tr. 3710). It is my idea that if our connections are receiving their proportion of the freight charges they ought to participate in the car hire rather than have us charge for terminal delays incident to a delivering carrier.

Cross-examination:

On Exhibit 376, questions 7 and 8, the detention of 29 tank cars is included in the total detention shown at the bottom. I don't know whether it is or not. I did not make the report. I think that the $1,775 I referred to represents per diem car hire without the mileage (Tr. 3711). I think you could deduct $1,707.50 per diem from the $1,857.99 and get a balance which would represent the payment on mileage cars. We got no free time (Tr. 3712). There seems to be some discrepancy, and I would like to check the answers to questions 7 and 8 against question 18-A. Some demurrage accrued in 1925, although it is not shown in Exhibit 376. I would like to check that also (Tr. 3713). Our condition has changed since 1925 and today the Appalachian Lumber Company owns the railroad. They have owned it since last October, a year ago. Our land connects with the Southern at Easley. For a mile from Easley we have a level track, then a 3% grade for a mile and 2 miles down grade 2%, then a 1% grade up for the next 2 miles, then a 3% grade down for 1½ miles. The balance of the distance into [fol. 727] Pickens is up hill over about a 2% grade (Tr. 3714). On lumber from Pickens to the junction we can

handle 300 tons, including the weight of cars and the tonnage in them. If the loading is heavy it will reduce the number of cars. An empty car will weight about 20 tons so that we can ordinarily handle 6 loads or 10 empties. Foreign lines solicit the traffic on our railroad. Our new industry will require about 10 cars a day and we will have to have the cars and hold them in advance. It will be an item of extra expense. We will have to have a reserve in order to supply them. If the reserve is depleted we will have to give instructions to the Southern for empty cars (Tr. 3715). A number of them will have to be handled empty one way.

H. S. MANTOOTH was called as a witness and, being duly sworn, testified as follows:

I am General Superintendent of the Tennessee & North Carolina Railway. The railroad consists of two divisions which do not connect. The main division, known as the Crestmont Division, operates from Newport, Tennessee, where it connects with the Southern to Crestmont, North Carolina (Tr. 3716). Operation on this line was begun in September, 1902, and extends south from Newport Junction for 21 miles. The other division, known as the Knoxville Division, is the old Knoxville & Carolina Railroad. It connects with the Southern at Vestal, Tennessee, and runs south to Sevierville, Tennessee. The chief products on the Crestmont Division are lumber and forest products and on the Knoxville Division forest products and agricultural products. The Crestmont Division is in a mountainous section and outside of Newport, Hartford is the only station of consequence with a population of 500. The Knoxville division in addition to serving manufacturers of forest products, serves an agricultural section, Sevierville, the most [fol. 728] important, having a population of 800 to 1,000 people. The Crestmont Division was constructed to serve the lumber industries at Crestmont (Tr. 3717). The Knoxville Division was acquired by lease and was built to serve a territory more of an agricultural nature. There were no other railroads in the locality. Prior to the construction of the lines, the people on the Crestmont Division were from 10 to 20 miles distant from a railroad. The Knoxville Divi-

sion operates from the Southern for a distance of 27.8 miles and serves the territory adjacent thereto. Lumber, wood and pole operators supply most of the outbound tonnage on the Crestmont Division. On the Knoxville Division we have the same products but they are a lesser percentage of the total (Tr. 3718). We have no traffic of any consequence on articles manufactured from raw materials. There is one small furniture plant and one small chair factory. We have no industries which manufacture and reship raw products which we bring in, nor any industries which manufacture and reship raw products originating on other lines, although there is a small flour mill on the Knoxville Division which ships out grain products. Our lumber and poles go east and west. The wood and other forest products go to Newport, Knoxville and Canton (Tr. 3719). From 1910 to 1918 our average detention of cars has decreased from 4 days to 3 days. The per diem rates increased from 30¢ to 35¢ in 1910 and 1911 up to the present $1 per car per day November, 1920. From April, 1918 to August, 1920 we received 2 days' free time under contract with the Railroad Administration. In 1910 our car hire was 1.9% of our freight revenue and in 1925 it was 14.2% (Tr. 3720). We are not a subscriber to the per diem rules of the American Railway Association, as we think the expense would be greater than the benefits. Moreover, we have no voice in making the rules. We handle probably 3 or 4 cars a month on the Knoxville Division [fol. 729] in terminal switching. We receive no free time when cars cannot be loaded or unloaded because of bad weather. We collect demurrage from shippers and receivers under the National Demurrage Rules which allow deductions for Sundays, holidays and bad weather. Lumber and forest products are the chief commodities handled by our two divisions (Tr. 3721). They constitute 85% of the traffic on the Crestmont Division and about 50% on the Knoxville Division. We earn approximately $17.50 a car and our average per diem is $3. We have average demurrage agreements with two industries, but I am not sure whether or not they work a disadvantage to us. These agreements are handled by the Southeastern Demurrage Bureau. We pay them so much a month and they check the records and make the bills (Tr. 3722), to determine whether or not the proper demurrage has been assessed. We operate daily freight service but our divisions have not

been increased to cover the rising per diem rates. None of our industries have an interest in the railroad but the officers of the Boice Hardwood Company have (Tr. 3723). Three-fourths of the individuals who have an interest in the Hardwood Company own our stock. The railroad is owned by the Boice Hardwood Company which is located on the Crestmont Division (Tr. 3724). That is the division having 85% of its traffic in forest products. Since our questionnaire was made out conditions have changed as we have sold one division of the railroad and have acquired another one by lease.

Cross-examination:

The Southern Railway connects with both of our divisions (Tr. 3725) and is our only connection. We have local traffic consisting of extract wood handled in our own cars, although we might occasionally pick up a car from the Southern. Our equipment is almost entirely stock cars and we might not handle all of our local traffic in them (Tr. 3726). To the extent that we handled it in other cars, we handle it [fol. 730] in foreign equipment. Our terminal switching service does not amount to much and we get a reclaim on it of $4 a car. It is performed at Knoxville on the Knoxville Division. Our cars are interchanged with our connections (Tr. 3727). On traffic to Canton, North Carolina, practically all the freight is loaded in our cars. The Southern pays us per diem on our cars. We would be willing to extend free time to the Southern in using our cars if they got the short haul instead of us getting it. I distinguish between the two carriers on account of the length of haul, as the Southern has the advantage. That is one of the conditions justifying our not paying anything but requiring them to pay something. That is the only one that we can think of now. Our average haul on interline traffic is about 15 miles on the Crestmont Division (Tr. 3728) and about 20 miles on the Knoxville Division. I don't know what our per diem payments were in 1925 and 1926. I think that the answer made by us to the questionnaire of the Short Line Railroad Association correctly shows our gross operating revenue and net railway operating income and our percent of net railway operating income to book investment for the years 1920 to 1925, inclusive (Tr. 3729). The document

shows that in 1920 we earned a return upon book value of .56%; in 1921, 4.87%; in 1922, 6.61%; in 1923, 6.43%; in 1924, 3.84%; and in 1925 4.01%.

Those percentages are the rate of return earned on the book value of the property in the years mentioned. I think the 1926 figures would reflect about the same condition. These figures relate to the Crestmont Division from Newport to Crestmont, 21 miles (Tr. 3730) and the Pigeon River Division from Canton to Spruce, a distance of 15 miles. That is the old road. The old line served a large mill at Crestmont and 90% of our traffic was outbound lumber from mill. The mill has been dismantled and surrendered our lease [fol. 731] covering 14.95 miles. The mileage I formerly gave you was in error as the old Tennessee & North Carolina, to which the records in the questionnaire apply, was 37.11 miles. After we surrendered the lease it was cut down to 21 miles (Tr. 3731) because of the abandonment of the 14 miles to the mill. In addition to the remaining 21 miles we have the other line consisting of 27.8 miles. The two roads we now own are 25 miles apart at the nearest point. The old line connects with the Southern at Newport Junction, Tennessee, and extends from Crestmont, North Carolina. It is now 21 miles long and is called the Crestmont Division (Tr. 3732). Its traffic is not as great as it was before the mill was abandoned. The traffic on that line does not now differ a great deal from what it was in 1925, although there is a new plant which for the last few months has increased our revenue considerably. Outside that, the situation is about the same so that the records to which reference was made would be fairly representative of what the Tennessee & North Carolina proper is doing. For the first 10 miles, the line runs through level country and then we strike mountains and it is very mountainous from there on (Tr. 3733). For the next 11 miles the grade climbs to a maximum of about 3% as we go toward the stub-end. The loaded haul is in the opposite direction, more or less down grade, until we strike the level grade. On that line we have 3 locomotives and own 2 freight cars. We lease 25 stock cars for lumber and wood loading. The Newport line is a party to the divisions on all the lumber traffic that it handles but not on all traffic (Tr. 3734). Both lines had gross operating revenue in 1925 of $143,-

031.77 and both paid car hire expense of $18,498.10. The Commission's value of $431,322 for property owned and $508,863 for property leased applies to both lines. The book investment of 1925, shown as $881,955.65, I do not think applies to both lines. The net railway operating in- [fol. 732] come of $56,288.78 in 1923, $33,863.83 in 1924, and $35,403.84 in 1925 applies to both roads. Also the car hire expenses of $27,298.07 in 1923, $21,815.22 in 1924 and $18,- 498.10 in 1925 are for both roads (Tr. 3735). The freight cars we lease sometimes go to other railroads and we receive $1 a day for their use on the Southern Railway only. The practice has been in effect for a good many years. We don't consider that as car hire to us because we pay it to the man we lease the cars from. We pay the stock car company $1 a day for every day those cars are on foreign lines. In 1913 we paid 25¢ a day for them when they were on our line, but that has gone up now to 85¢ (Tr. 3736). We pay 85¢ a day for time while they are on our line and $1 a day when they are on some other road. It may be that we don't treat them as rough, as they come back lots of times jammed up. Our line does not subscribe to the per diem rules agreement and the arrangement under which the Southern pays us per diem is a local agreement. The questionnaire correctly shows that in 1925 we received 3,949 foreign cars from the Southern and that our average detention was about 3 days per car (Tr. 3737). Most of the cars we receive from the Southern are loaded and are delivered back loaded. There is some little variation in the empty movement on both divisions. I don't know how the 3 day figure was secured. The figures, showing a total of 1,071 plus 3,539 loads interchanged in 1925 in foreign equipment, apply to the operation of both roads (Tr. 3738). That is also true of our demurrage commissions in 1925 amounting to $1,444. Most of our gross operating revenue comes from freight service, as our passenger revenue has become very slim. Our road is a Class II railroad. Our other line connects with the Southern at Vestal and runs 27.8 miles to Sevierville. It has no branch lines. We call it the Knoxville Division because it is within the corporate limits of Knoxville (Tr. 3739). We have several stations [fol. 733] but only 2 or 3 of importance. The line has 2 locomotives and 3 box cars. Only the initials of the engines

have been changed. Some of the country it operates through is very good agricultural land, but other parts of it are poor and a mountains section. About half the traffic is agricultural and half forest products. About 70% of the traffic is outbound and about 30% inbound (Tr. 3740). Our terminal switching of 3 or 4 cars a month at Knoxville is performed for the Southern which allows us $4 reclaim. We collect the switching revenue from the consignee, as it is not absorbed by the Southern. I don't know what our detention is on those cars, but that was the reclaim agreement with the Southern when we took the line over. We have through lumber rates to the east and west on our Crestmont Division. They are made a certain amount higher than the Newport rate so that it is not all trunk line shrinkage (Tr. 3741).

F. E. GILLIS was called as a witness and, being duly sworn, testified as follows:

I am Auditor and General Freight and Passenger Agent of the Tennessee, Kentucky & Northern Railway. I have prepared an answer to the Commission's questionnaire.

(Said document received in evidence as Exhibit No. 379.)

The answer to question 7-B in this exhibit is erroneous. The figure of 4.26 should be corrected to show 5,574 as the total number of days (Tr. 3742). The total number of cars interchanged was 1,218 so the average detention per car was 4.58 days. In question No. 20 the percent of net railway operating income to book investment value should be changed to tentative value set by the Commission, which has been made final value. In the same question the percentage of car hire to gross freight revenue is wrong and I will file a statement correcting it. Our line connects [fol. 734] with the Tennessee Central at Algood, Tennessee, and operates 19 miles northeast to a stub-end at Livingston, Tennessee. We serve 6 counties in Tennessee and 3 counties in Kentucky (Tr. 3743). I have prepared a statement of the territory we serve showing counties, population, etc.

(Said document received in evidence as Exhibit No. 380.)

In our territory agriculture, poultry raising and manufacture of forest products are the principal industries. There has lately been some oil development from which we anticipate increased tonnage. We serve saw mills, lumber plants, oil stations, wholesale houses and a flour mill at Livingston located on our rails. Most of our tonnage comes from industries on our rails. Some saw mills, however, are located at a considerable distance from the interior. One trucks its lumber 21 miles to our rails (Tr. 3744). Our tonnage is principally forest products and live poultry outbound and fertilizer, feed, flour and merchandise inbound. From 1924 to 1926, inclusive, 69.38% of the total tonnage was outbound and 30.62% was inbound. In the same period 63.8% of all our tonnage was outbound forest products. Probably 60% of our traffic comes from saw mills located at a distance from our tracks. We do not subscribe to the car service and per diem rules but settle direct with the Tennessee Central on foreign cars on a straight per diem basis. On mileage cars we pay the flat rate of $1 for the time the car is on the line, although the Tennessee Railroad pays the owner at the rate of 1½¢ a mile for account of our line, or 57¢ a car on tank cars and 76¢ on refrigerator and live poultry cars. On tank cars the Tennessee Central makes a profit of 43¢ (Tr. 3745) and on refrigerator and poultry cars it makes 24¢. It has to make the individual settlement with car owners. In 1925 we handled 37 tank cars outbound, 30 poultry [fol. 735] cars and 3 refrigerators. The Tennessee Central made $15.91 on the tank and $7.92 on the other cars (Tr. 3746). We extend the straight demurrage agreement to our shippers and consignees. I have made a study of our freight revenue, per diem and demurrage for the years 1913 to 1927.

(Said document received in evidence as Exhibit No. 381.) (Tr. 3747).

This exhibit includes both per diem and mileage cars. I have a statement showing the relation of earnings on our road and foreign lines covering 46 inbound cars and 77 outbound cars handled in February, 1927.

(Said document received in evidence as Exhibit No. 382.)

On the inbound cars we received 22% of the earnings and paid 34% of the per diem. Our per diem average was possibly higher as we add 2 days to the foreign line detention

for loading at point of origin but 36 of the cars were merchandise cars originating at the warehouse of the Tennessee Central at Nashville and were possibly loaded in one day (Tr. 3748), I think, since all shipments delivered to that warehouse by 4:00 in the afternoon are supposed to be loaded in these cars. After that time shipments are held and loaded the next day. The statement shows that most cars which we receive loaded are reloaded outbound. We can find reloads for practically all inbound cars. It also shows that the relation of our per diem to earnings was 9.2% and on foreign lines was 5.8%. The territory through which the roads operates is very mountainous and we have heavy grades and sharp curves. Our maximum grades are 4%. We handle practically no local traffic in foreign cars. The cars which we own are usually enough to take care of that traffic (Tr. 3749). On our strictly carload traffic the Tennessee Central acts as intermediate carrier on about 80% of the total. Practically all of the l. c. l. tonnage inbound originates on the Tennessee Central at Nashville. From our junction it is 180 miles to one end of the Tennessee Central [fol. 736] and 69 miles to the other end. Most of their intermediate traffic with us is interchanged to foreign lines at Emory Gap, 69 miles from the junction, so that the detention of the Tennessee Central on the traffic should not be over one day per car. On the haul of 180 miles it should not be more than 2 days and 1 day on the haul to Nashville. Our average detention per car was 4.58 days in 1925 which is fairly representative. We are not satisfied with our present car hire basis as it is unfair on the mileage cars and the per diem cars. On the mileage cars the Tennessee Central charges us $1 on each car but only has to pay 57¢ (Tr. 3750) on tanks and 76¢ on refrigerator and live poultry cars. On the per diem cars the day basis of computing the cost of car ownership between car users is unfair to the terminal road which bears all the cost including free time to shippers and consignees, switching, spotting service, etc. Our detention is 4.58 days per car, whereas that of the Tennessee Central on most traffic does not exceed one day. We receive an average of only one-third of the revenue; whereas, we pay four-fifths to five-sixths of the per diem on the cars which furnish the revenue. Even where interchange business is local on the Tennessee Central, the bulk of it is merchandise from Nashville originated in such a manner that very little

could have made an arrangement with the L. & N. to handle that direct with it, and I understand that we would have gotten the reclaim if we had joined the Association. Had we been able to arrange with the L. & N. to make our car hire settlements direct that would have relieved us of the additional clerical expense, and by joining the Association we would have received reclaim on cars in terminal switching (Tr. 3694). I think we handled 73 cars in terminal switching in 1926. I did not go into the cost of joining the Association. We would have gotten $146 on our 73 cars, and if the dues were $40 we might have made $106. As it stands today we are performing the service and receiving practically nothing for it. All our business is handled in foreign cars. Our road was operated as the Birmingham, Columbus & St. Andrews until September, 1926. From September to December, 1926 it was operated as the Alabama & Western Florida. The per diem accruals in 1926 amounted to $1,851 and our average detention was around 2 days (Tr. 3696). We interchanged approximately 900 loads, but I do not have the exact figures. About 60% of our traffic is interstate and 40% intrastate. Most of the intrastate traffic goes to Pensacola. The interstate traffic moves all over the country. To Pensacola we have a 38 mile haul and the L. & N. has a 116 mile haul. It gets our [fol. 723] traffic without any solicitation. The naval stores consist of rosin and turpentine and originate on our line (Tr. 3697). Part of it goes to Pensacola and part of it north and east. 40% of it, I would say, goes to Pensacola. About half of our terminal switching is performed on intrastate traffic. Very few of the cars are intrastate (Tr. 3698). We have two steam locomotives in service and one out of service. We receive divisions of through rates on line haul traffic. Our rates are made 2½¢ less than from Chipley. Our tariff carries a rate of 4½¢ on lumber to Chipley (Tr. 3699).

T. Taylor was called as a witness and, being duly sworn, testified as follows:

I am General Manager of the Pickens Railroad. I have answered the Commission's questionnaire in this case.

(Said document received in evidence as Exhibit No. 376.)

We connect with the Southern Railway at Easley, South Carolina, and run 9.3 miles northwest to a stub-end at Pickens. We operate through a hilly country with maximum grades of 3% and sharp curves throughout (Tr. 3700). The road was incorporated in 1892 but not completed until 1898. It was built to give railroad service to Pickens and then depended entirely upon the commerce of the town and the lumber. The lumber has now given way in a large degree to cotton products. The chief traffic of the road is cotton factory products, coal and lumber. 98% of it is handled to and from Pickens. When the road was built there were no towns between Pickens and Easley, but 8,000 or 10,000 people were served (Tr. 3701). Pickens now has about 3,000 people and the territory served by the road is approximately 15,000 to 20,000. The nearest other railroad is the Southern with which we connect at Easley. Before our line was built the territory had no transportation facilities and all hauling was done by wagon over dis- [fol. 724] tances from 10 to 40 miles (Tr. 3702). The line served the same territory when it was built that it serves now. Beyond Pickens the country is mountainous and building a railroad would be difficult and expensive. The road has brought the trade center at least 10 miles nearer to most people in the territory and has enabled Pickens to develop and secure industries. We handle no raw products outbound from our industries but receive a haul on manufactured articles made from raw products which we originate. We move cotton into Pickens and it is manufactured into cotton products. The timber on the line is made into lumber, but we only haul the lumber. On most of the cotton products manufacutred at Pickens, we get no haul on the cotton inbound (Tr. 3703) as it is brought in by wagons and trucks. There is now proposed the establishment of a large plant to cut timber off the mountains beyond Pickens. Besides the few saw mills and one cotton mill, these are the only industries located on the road. We have a comparatively small movement of cotton to the mill at Pickens. No raw materials originate on the line which are shipped off, except rough lumber which moves as a rule to short distances (Tr. 3704). Cotton products is our principal commodity. It is a high grade commodity and the average earnings are from $20.00 to $30.00 a car according to weight. Coal, cotton products and lumber are our larger

not taken into consideration the $7,344 rental (Tr. 3761). I am positive of that. To get net railway operating income on Exhibit 379, we would deduct the rent of leased road and interest on unfunded debt from the figures on the last page. In 1924, for example, with that deduction there would be left net income available for dividends of something over $5,000. The company I am representing here has $10,000 of capital stock (Tr. 3762). The $5,000 was not available for dividend on the capital stock of $10,000 because of additions and betterments which took all of our surplus. In 1925 our additions and betterments were $200 more, but we were paying on what we had already obligated ourselves for. In 1923, we had $11,500 for dividends on capital stock over 100%, but in 1923 and 1924 we had the best earnings we ever had because we were hauling material to build the highway that almost wrecked our road. In 1922 we earned 90% of our capitalization in 1921; in 1921 about 80%; but in 1925 we lost $7,300 and in 1926 $1,161.78. That is why we are worrying about the financial condition at this time (Tr. 3763). We had a favorable passenger business up to 1925, but the highways were completed in 1924 and the busses took our passenger business away from us. In 1923 about $18,000 of our gross revenue of $88,489 was passenger revenue. The loss of passenger business is not the only thing that has caused the decline from 100% net income to a deficit. We have lost considerable freight business to the trucks. We have abandoned passenger trains, but I figure we lost about 30% of our freight business to trucks (Tr. 3764). Our tonnage has increased considerable but the rate per ton has decreased. The decrease in earnings per ton is because we lost the high rated freight to the highways; that was sugar, canned goods, clothing, etc. The truck rate is lower than our first, [fol. 740] second and third freight class rate but higher than the other class rate. The merchant gives the trucks the traffic he can save money on and gives us the other traffic. As I recall it, our railway operating expenses in 1925 were about $10,000 higher than in 1926 due to undermaintenance (Tr. 3765). We postponed that maintenance to a later date and also attempted to operate some passenger business during more than one-half of 1925. The figures that I have given are just rough. The operating ex-

penses ending November 30, 1925, amount to $57,270.95. It would run about $4,000 in December (Tr. 3766). I am speaking of railway operating expenses, Account No. 531. To get net railway operating income, we take into account railway operating expenses, taxes, hire of freight cars, rent of passenger trains and joint facility rents. Our railway tax accruals in 1925 were approximately the same as in 1926. Our hire of freight cars in 1925 was $5,653.50, about $90 more than in 1926. Our rent of passenger train cars would probably be all gone in 1926 and might be higher in 1925, I really cannot say offhand (Tr. 3767). I took the figures for Exhibit 383 out of our annual reports to the Commission. To get the figures on Exhibit 382, I asked our Superintendent to give me a report to cover the information required. On inbound loads, the date of interchange is given on that report and the date of the release of the car by the consignee. I paid per diem on those cars from the time they were interchanged to me until the time I gave them back to the Tennessee Central. Exhibit 382 only shows our per diem on inbound carload shipments (Tr. 3768). All of those cars were loaded out except 3. On those 3 cars I included the per diem from the time we received them until they were interchanged back. They were coal cars and were taken out on our first train after unloading. On outbound traffic, where I got empties from the Tennessee Central, I computed per diem from the time the empty car was interchanged to me and counted all the per [fol. 741] diem from that time through the period of loading until the car was sent back loaded to the connecting line. In computing per diem on foreign lines, I included the per diem between the waybill date and the date we got the car, plus 2 days (Tr. 3769). We allowed nothing for the connecting trunk line prior to the time the car was set for loading, but did do that in computing our own per diem. Our main line is 17 miles long. We have two severe grades. One is between 8 and 9 miles from Algood and one is further off. On the first grade the heaviest grade is away from Algood and is about 250 or 300 yards long and amounts to approximately 4.1%. The grade which is approximately 17 miles from our connection is a little longer (Tr. 3770) but not so steep. There are many dips and many of the

grades are accompanied by curves. About 5 heavy loaded cars is all that can be taken over those grades with a 50 or 60 ton engine. We rarely have more than 4 cars in a train but where we have we double the hill by pulling over 4 and going back and getting the rest. Our average haul is just a little under 19 miles (Tr. 3771). The grades did not increase the average detention in 1925 as we can make the run in 2½ hours with two runs over the grades. We waive demurrage charges in bad weather under the demurrage rules and frequently waive them to a considerable extent because of the location of our patrons. That might account for our detention over that of the shippers in view of the fact that we only collected $231 demurrage. Our total outbound and inbound loaded cars in 1925 was 1,952 loads with aggregate detention of 5,574 days on which we paid per diem (Tr. 3772). I don't think our average detention would fall to less than 3 days. We receive 467 empties from the Tennessee Central out of 1101 loads sent out. Those empties would be loaded in the opposite direction and the rest of the 1,101 were cars inbound. The 5,574 days represents detention of all cars. The heaviest fertilizer [fol. 742] movement is in the spring, although there is some in the fall. I don't know what the additional free time amounts to (Tr. 3773). If it rains for 4 days, which it sometimes does, we must hold those cars until it stops raining. Fertilizer moves in bulk in sacks and cannot be unloaded during rainy weather.

W. C. WHITE was called as a witness and, being duly sworn, testified as follows:

I am General Manager of the Cadiz Railroad which operates from Cadiz, Kentucky, a stub-end, 10 miles east to Gracey, Kentucky, where we connect with the Louisville & Nashville Railroad and Illinois Central Railroad (Tr. 3774). Exhibit 12 does not correctly show our basis of car hire settlement. The L. & N. gives us a demurrage basis on its cars and makes us pay straight per diem on all other cars. The Illinois Central gives us a straight demurrage basis on all cars. Our connections place cars on their own sidings instead of our interchange track and compute time from the placement on those sidings. Our main line is 10.3

miles long and we have half a mile of side track. The demurrage basis has been in effect with the L. & N. since March 1, 1920, and prior to Federal control. I have a letter dated August 3, 1920, from the L. & N. to the President of our road (Tr. 3775) which put us on a demurrage basis effective March 1, 1920, with the interchange hour at 7:00 A. M.

(Said document received in evidence as Exhibit No. 384.)

The demurrage basis has been in effect with the Illinois Central since and prior to Federal control, the interchange hour being 10:30 A. M. During Federal control we had a straight per diem basis. We apply the straight demurrage basis to our shippers and consignees. We run a train from Cadiz at 9:45 A. M., reaching Gracey at 10:30 A. M. We leave Gracey at 11:45 A. M. and arrive at Cadiz at 12:45 P. M. and spot the cars by 1:00 o'clock. Our free time of [fol. 743] 48 hours with the Illinois Central begins at 10:30 A. M. The L. & N. train arrives at Gracey one hour after our train has left, but if they have cars for us we wait and save a day, as our free time with the L. & N. starts at 7:00 A. M. and we run only one train a day. I have a statement of our revenue and expenses for 1925 and 1926.

(Said document received in evidence as Exhibit No. 385.)

Our railroad is in the *sup*reme western part of Kentucky. It is No. 3 on Exhibit No. 319. In 1926 we paid $21 in car hire, making collection of demurrage from the shipper and remitted the money to the railroad for whose account the car was interchanged. It does not amount to more than $10 or $15 a year (Tr. 3777). I suppose the $21 is shown in other expense. We have a few joint rates, but generally our connecting lines get their full local revenue as most of our rates are on combination. Some of the through rates are made on combination. The road was built in 1902 to supply transportation to Cadiz. The haul by wagon was 10 miles. The construction money was furnished by individual citizens in the city and we also borrowed $40,000 from the Illinois Central on a 6% note. We have always paid the interest and have paid the principal except $10,000 which will be paid next year. The Commission had not fixed a final value on the road (Tr. 3778). I have statement of our carload tonnage for 1926, covering 77 outbound cars.

(Said document received in evidence as Exhibit No. 386.)

The statement shows the cars for each month, the number of L. & N. cars, Illinois Central cars and foreign cars with the loading and mileage. I have a similar statement covering inbound carloads.

(Said document received in evidence as Exhibit No. 387.) (Tr. 3779.)

This is the same as the outbound statement, except that instead of prorating mileage, I have prorated the revenue. I was able to obtain the revenue on inbound freight because we collect the through bills. Our principal outbound ton-[fol. 744] nage is livestock and forest products and our principal inbound tonnage is coal, gasoline, oil, fertilizer and miscellaneous commodities. We have no industries except a gasoline filling station. We are parties to the A. R. A. tariff providing for payment on tank cars of 1½¢ a mile. We have no complaint to make and are satisfied with our present basis of car hire, and so far as I know our connections are satisfied. We ask that we be left alone and our present arrangements be undisturbed (Tr. 3780). We think, however, that Paragraph B of Rule 6 of the Per Diem Agreement menaces our agreement and we ask the Commission to abrogate or cancel it. We have no industries and no shipper or group of shippers has financial control of the railroad. A hard road paralleling our line was built in 1924 and practically destroyed our passenger revenue which had previously averaged $6,000 a year and about one-third of the freight traffic. The presence of the hard road makes it difficult to increase our rates as the decrease in traffic would more than offset the increased rates. Any additional revenues we get will have to come from absorptions by our connecting lines (Tr. 3781).

Cross-examination:

Our road operates 10 miles from Cadiz to a connection with the Illinois Central and L. & N. All our traffic is interlined traffic to and from the town of Cadiz. We have no switching traffic and all of our traffic is line haul. I don't know what part of our traffic is handled under divisions of joint rates. We have very few such rates. I understand the fertilizer rate, effective this year, is the only one that

does not carry our local combination (Tr. 3782). Most of the traffic moves on our local rate between Cadiz and the junction. Under our arrangement with the Illinois Central our demurrage basis allows us 2 or 3 days free with $2 a day thereafter for 4 days and $5 a day thereafter. We have the same basis on cars owned by the L. & N. but on foreign cars from the L. & N. we pay straight per diem of [fol. 745] $1 a day. There are not many of such cars. We charge a shipper demurrage if he keeps a car over 48 hours (Tr. 3782). As a rule what we have to pay in car hire we collect from the shipper or consignee in demurrage, except on foreign cars from the L. & N., on which we pay $1 a day. We turn all demurrage over to the railroads. We collect nothing and pay nothing. $15 or $20 is approximately all the demurrage that shippers would pay in a year (Tr. 3784). We turn that over to the railroads. They charge us with any demurrage and when we collect that demurrage which is $15 or $20 a year we pay it to them. Our demurrage collections practically offset our car hire bills. We collect the demurrage from shippers but we have our car hire bills from the connection before we collect it. We have one freight car to handle local freight and have two steam engines. I don't know what our book investment is (Tr. 3785). We make annual reports to the Commission and I have no objection to getting the book value from them for 1925 and 1926. In interchanging with our connections we go to the Illinois Central station and get our cars from their siding back of their station. In the case of the L. & N. we go down their main track and onto their siding for cars. If the cars are placed before 11:45 by the L. & N. we take them away if they have a car for us (Tr. 3786). We wait for the car and take it the same day. Practically, we take them away the day they are set. If we are not notified by the L. & N. that the cars are placed the time starts the following morning at 7 A. M. The reason we wait for the cars is to get extra time for the shippers. Our time on the Illinois Central starts at 10:30 A. M., which gives us 48 hours from the time we leave the Illinois Central track. Our regular train arrives about 10:30 A. M. We allow [fol. 746] 48 hours free time to consignees beginning at 7 A. M. (Tr. 3787). We get these cars to the shippers by 1:00 o'clock. Generally we get them to start loading right away and get the cars out within 48 hours and get them

back. Occasionally we get a car back to the interchange point within 48 hours but not many. On stock cars we get them at 11:45 at Gracey and have them back the next day at 10:30. Both our connections are at Gracey and from there is 10 miles to Cadiz with no branch line (Tr. 3788). Some tank cars come to our line and on them we pay 1½¢ mileage direct to the car owner. In 1926 we paid $21 car hire to the L. & N. on foreign per diem cars. I don't know what we paid to both roads as demurrage charges but it was probably just a few dollars that we were unable to assess against the shipper (Tr. 3789).

I. C. JOHNSON, having been previously called as a witness, was recalled and testified:

I am Auditor of the Flint River & Northeastern Railroad. We have prepared an answer to the Commission's questionnaire in this case.

(Said document received in evidence as Exhibit No. 388.) (Tr. 3790.)

I also have a map of the railroad.

(Said document received in evidence as Exhibit No. 389.)

The road runs from Pelham, Georgia, where it connects with the Atlantic Coast Line, north for 23.03 miles to Ticknor, Georgia, where it connects with the Georgia Northern Railroad. The road was incorporated in 1903 and consists of a consolidation of two logging roads. At that time the forest products constituted the chief traffic (Tr. 3791). We have 3 towns on the line with population of about 3600. The line was built to develop the territory that it now serves. The only other lines are the Atlantic Coast Line at Pelham and the Georgia Northern at Ticknor. Before our line was built shippers were forced to go to those lines [fol. 747] over an approximate distance of about 25 miles from the territory we now serve (Tr. 3792). Our territory now is about 15 miles to Pelham and 15 miles to Ticknor. We have some oil mills to which we handle raw products inbound with a haul on the cottonseed oil out. We receive some haul on articles manufactured from raw products which we originate, such as canned goods, cotton factory

products and cottonseed meal (Tr. 3793). We haul some raw material inbound to cotton mills, oil mills and canning factories and haul a portion of the manufactured article out. The rest of the products go to competitive lines. Most of our raw products go to Pelham and when manufactured go to eastern and western points. Our chief commodity is agricultural products on which we get about $12.50 a car and pay about $3.25 per diem (Tr. 3794). It is about 25% of our total traffic. On fertilizer the trunk lines receive the same revenue from the junction point on a car from us as they would receive if they originated it without standing the loading per diem. If loaded on their own rails they would not receive more revenue. That is an illustration of rates made on combination in Georgia. The Commission has ordered a change in that scale and it will be changed if the Georgia Commisison decides to put it in. We receive a reclaim when we perform terminal switching for our connecting lines (Tr. 3795). We receive an indirect reclaim from the Atlantic Coast Line. We allow our connections reclaim of 2.49 days but we receive no free time for bad weather when cars cannot be loaded or unloaded. We apply the standard demurrage rules, giving consignees and shippers 48 hours free time after notice; also Sundays and holidays and bad weather. We do not subscribe to the per diem rules, as it is too much of a task to make daily reports to and monthly settlements with car owners all over the country. Also, if we were a subscriber we would have to pay straight per diem without free time [fol. 748] (Tr. 3796). On foreign cars from the Georgia Northern we get free time to the extent of our actual detention, this arrangement being in effect since August 1, 1927. The Georgia Northern is a subscriber but allows us free time. Substantially the same basis is in effect with the Atlantic Coast Line. That road, from the standpoint of tonnage, interchanges its cars to the Georgia Northern which assumes the car hire in the same fashion as though the cars came through the connection at Ticknor. It assumes per diem both through the Pelham and Ticknor junctions, even though it does not participate in loading the cars. They probably get a haul on the car. We are thoroughly satisfied with our car hire arrangement (Tr. 3797). I know the Georgia Northern is satisfied with this arrangement, as I am Auditor of that Railroad, although

there is no financial connection between it and the Flint River Road. We have no complaint on our present basis of car hire settlement and want it left undisturbed. I understand that the A. R. A. is trying to enforce Paragraph B of Rule 6 and compel the Georgia Northern to collect straight per diem from us without free time. This would be ruinous, and we hope the Commission will not allow the A. R. A. to dominate our friendly connections which realize our conditions better than the A. R. A. or other trunk lines. During Federal control we paid per diem with reclaim of 2 days as our road was a party to the short line contract of the Director General (Tr. 3798). Prior to 1918 our connection parked foreign cars in our yards and siding to be used in loading melons and fertilizer without charging per diem until the loading was actually started. This was storing cars for prospective loading, and I think it is still a common practice between short lines and trunk lines. Our average detention from 1913 to 1925 ranged from 2.17 in 1922 to 3.5 days in 1925. [fol. 749] The detention in 1925 was due to the gravel movement which delayed the cars. Our records are not in such shape as to afford comparisons of 1910 freight earnings with 1925 earnings (Tr. 3799). From 1912 to 1925 our freight revenues increased 51.3%, while per diem paid increased 124.8%. We have the average detention agreement with some shippers which works to our disadvantage. We operate a freight train daily each way, except Sunday. I have a statement of the relation of our per diem to revenue in 1925 and 1926, when we were paying straight per diem without free time or reclaim.

(Said document received in evidence as Exhibit No. 390.)

In 1926 per diem absorbed 15% of freight revenue and in 1925 15½% (Tr. 3800). I have prepared a statement for 4 months of 1927, covering 65 inbound loads and 58 outbound loads, showing the relations of earnings to per diem on our line and on our connections.

(Said document received in evidence as Exhibit No. 391.)

On the 65 inbound cars we received 18% of the earnings and on the 58 outbound cars 15%, and on the total number of cars 16%. On the inbound cars we paid 33% of the per diem or 15% of the earnings; whereas, the same relation

on the foreign lines was 6½%. This was before we made our per diem arrangement with the Georgia Northern. Since then free per diem has gone into effect. (Tr. 3801). The Georgia Northern being on the inside consented to give us full free time for actual detention beginning August 1, 1927, as our average detention is around 3 days. The Georgia Northern receives the bulk of our tonnage which is one of the reasons they have made this concession. The Flint River road started operation the same time the Georgia Northern was completed from Moultrie to Albany and our people got the Georgia Northern interests to operate our road, although there is no connection between the [fol. 750] interests. Our people got the Georgia Northern officials to operate our road and the Georgia Northern gets 95% of the tonnage (Tr. 3802).

Cross-examination:

There is no direct interchange between our road and the Atlantic Coast Line. The interchange is through the Georgia Northern which has no railroad at Pelham. It is an arrangement between the car accountants. The bills for cars interchanged with the Flint River Road by the Atlantic Coast Line at Pelham are directed to the Georgia Northern. The Flint River Road handles the cars but does not pay the bills nor get them. The Georgia Northern pays the car owners and prior to August, 1927, billed the Flint River road for the actual time it had the cars. Since that time the Flint River road has been relieved (Tr. 3803). I don't know whether the actual interchange shows the cars to the Georgia Northern from the Flint River, nor can I say whether the agent of the Atlantic Coast Line shows an interchange with the Flint River road or the Georgia Northern. I would assume that the interchange is shown to the Georgia Northern since it gets the bill. So far as a foreign car owner is concerned, the Flint River and the Georgia Northern is the same railroad. The Flint River does not get per diem bills from the New York Central, for example (Tr. 3804). If they get a New York Central car the New York Central gets a report from the Georgia Northern and it then pays the bill for car hire on Flint River (Tr. 3805). The practice has been in operation for several years, during which the Flint River has not been a member of the A. R. A. I don't know whether it ever was a member. The

per diem accrues while loading. The fact that most of our tonnage is for account of patrons at distances from the rails, affects our per diem and demurrage (Tr. 3751): Most receivers of fertilizer live in the interior and have no warehouse facilities and must unload onto trucks and wagons. They cannot do this during rainy weather so that the cars must be held longer than usual. Bad weather also affects shipments by manufacturing plants off our rails. Cars are frequently ordered for a certain day, and although [fol. 737] we have them, bad weather forces the cancellation of the order for the cars. Under these circumstances we cannot collect demurrage and the cars stand there at our expense. We also have a complaint against the Tennessee Central in the method of handling car orders. It requires that all orders for empty cars be made in writing at Nashville, except livestock cars. It will not recognize telegraphic orders (Tr. 3752). This requires us to place orders for cars 2 or more days in advance of the date required, and often cars are not supplied on the date ordered. When we have orders and have an inbound loaded car released a day or 2 in advance of a shipper's order for the car, we have to hold the released car to fill the requirement. The refusal of the Tennessee Central to accept telegraphic orders for cars, coupled with our peculiar detention conditions, penalizes us heavily on car hire expense. I am sure that we have to place our orders for cars by letter to the Nashville office. We have a joint agent at the junction but he cannot wire Nashville for cars. We write to the car service agent and it has to go through our joint agent (Tr. 3753). We notify the joint agent, telling him in writing how many cars we want 2 days in advance. We can not wire for cars unless they are for perishable shipments. It is necessary to have the shippers notify us a day or two in advance when they want cars. If he notifies us and brings the goods in and we have not the cars, he must haul them back or have them damaged. We always get the cars some way. That is why our car hire runs up so high. We want 2 days' free time (Tr. 3754), also Sundays and holidays with per diem thereafter. This would not wholly equalize the conditions but would go far toward remedying the present unjust allocation of car hire. I have prepared an income statement of the road for 1926.

(Said document received in evidence as Exhibit No. 383.)

A representative of the car service agent called on me [fol. 738] the day before I came here and discussed this hearing (Tr. 3755). I got the impression that nothing was being accomplished here and there was no necessity for my coming. He asked me what I was asking for but I did not tell him. This was a local telephone call, but I could not tell who it was over the 'phone. He said what office it was (Tr. 3756). The telephone message came on Wednesday morning of this week, October 12. The man who talked to me said that he was with the Tennessee Central Railroad. I did not catch the name, but I heard the words "Car Service Office of the Tennessee Central". I got the impression from him that I would be wasting my time in coming here to testify (Tr. 3757). He asked me what we were going to ask for and I told him that I did not exactly know until I got to Atlanta, but that I wanted to get some more in line with what was considered a fair basis; that was the most important part of the conversation. He said they were not getting anywhere in the hearing (Tr. 3758). I would not be positive as to anything else that was said. I did recognize the voice. I did not catch the name, but I had talked to him before. He said it was the Car Service Office, and I could tell he knew something about the interchange of cars between our line and his. He said that he was to the Atlanta hearing on other matters. I cannot positively say whether he said that I would be wasting my time, or something like that (Tr. 3759). My impression was that my time would be wasted in coming down here and putting in my testimony, but I cannot tell you what he said in exact words.

Cross-examination:

Our line is leased from another railroad. We pay $7,500 a year rent and charge a difference of $156 to depreciation of equipment on leased equipment as operating expenses (Tr. 3760). To get net railway operating income available for dividends we would have to deduct interest on funded debt from the $12,766.20 net railway operating income in 1924, as shown on Exhibit 379, but we have no funded debt. [fol. 739] We would have to deduct our rent on leased roads which is not taken out. To arrive at $842.50, we have

Georgia Northern takes care of car hire on the Flint River and pays per diem to foreign lines while cars are on the Flint River (Tr. 3806). The interchange at both Pelham and Ticknor is between the Georgia Northern and Flint River, although I don't know what the interchange report says. There is very little interchange through Pelham with the Coast Line. Interchange reports on cars are made between the Georgia Northern and the Flint River. I could [fol. 751] not say definitely that there is an interchange report at Pelham between those roads. We have had free time since August 1, 1927 and prior to that, except during Federal control, we paid straight per diem to the Georgia Northern (Tr. 3807). All that per diem was paid to the Georgia Northern, including the per diem on cars interchanged at Pelham. We paid the Georgia Northern regardless of the point where we got or tendered the car. The industries shown on Exhibit 388 as owning 50% of our stock are the Pelham Oil Mills and Hand Trading Company. The Hand industries practically own the Flint River Railroad outside of the Ashburn and Moultrie interests. We really got a direct reclaim on terminal switching prior to August 1, 1927 (Tr. 3808). The Coast Line allowed reclaim to the Georgia Northern and it was in turn allowed by the Georgia Northern to the Flint River in settlement of the per diem bills. If some switching was done by the Flint River for the Coast Line, the reclaim was allowed to the Georgia Northern since it paid the per diem. I don't know how the Coast Line regarded it, but that is the way it was operated (Tr. 3809). The Flint River operates independently and has its own locomotive. There is no connection between the Georgia Northern and the Flint River, as the Georgia Northern does not operate the Flint River nor lease it. The reclaim is allowed the Georgia Northern at Pelham, although it does not operate and because it pays the per diem. The Flint River, owned by the industries at Pelham, controls practically all the business to Pelham (Tr. 3810). The Atlantic Coast Line does not bring the business to Pelham direct, but to get a haul it has said to the Flint River and to the Georgia Northern that it would be satisfied with the haul to Boston where the business is given to the Georgia Northern, even though it is handled by the Atlantic Coast Line and delivered at Pelham. The Georgia Northern is no different from any other railroad to

[fol. 752] which a short line reports. If a non-subscriber should report to the Southern, the Southern would be responsible for the per diem. Reports here are made to the Georgia Northern as a matter of convenience, and it either charges or credits the Flint River. The answer to Question 10 in Exhibit 388 shows we got no reclaim, but the fact is we did get switching reclaim (Tr. 3811). The answer in the exhibit is wrong. Demurrage collected is retained by the Flint River and that has been true since August 1, 1927. We pay no per diem but collect and retain all the demurrage. The detention of 3½ days per car in 1925 was unusual and is not representative. Our average is a little less than 3 days. That detention was due to delay on gravel movement, and I think we collected $1,100 or $1,200 demurrage (Tr. 3812). The increase in per diem paid was probably due to the increased rate, rather than increased detention. If we had used normal detention in 1925, the per diem increase would probably have been less than 124%. On Exhibit 391, I computed per diem on the Flint River from date of interchange to date empty equipment was released by the consignee and returned to the junction empty. If it was reloaded, to the date that it was released to the original load by the original consignee (Tr. 3813). On a car that came in loaded and moved out empty, we computed the per diem from the time the car was received by us through the period of unloading until the empty car was delivered back. On inbound empty cars we have computed per diem from the time the car was given up by the Georgia Northern up to the time it was loaded and delivered back to the Georgia Northern. Exhibit 391 includes all the per diem that accrued on all the cars during the time we had them. On foreign lines we computed per diem from the date of waybill to date of interchange and added 2 days to that (Tr. 3814). The Official Railway Equipment Register tariff, I. C. C. 180 shows that the Atlantic Coast Line connects with the Georgia Northern at Pelham. That shows [fol. 753] all the connections but does not show one between the Coast Line and the Flint River. I see no connection shown between those roads. On Exhibit 391 I have included the earnings and per diem of the Georgia Northern in that of the foreign lines. On less than 1% of our traffic we act as an intermediate carrier of line haul traffic. Our detention of 3½ days in 1925 was not representative but

was unusually high (Tr. 3815). The relation in 1925 of gross freight revenue of $60,000 and gross revenue from all operations of $62,000 obtains in other years. Practically all our revenue comes from freight. The first item in Exhibit 390 is gross operating revenue. I don't know why car hire was a greater percentage of gross freight revenue in 1923, 1924 and 1925 than it was in 1922. Perhaps we were given better train service in moving equipment faster. Our demurrage collections of $1,078 in 1925 were unusual. It was not a normal period (Tr. 3816). I wish to correct the statement in the answer to question 10, Exhibit 388 where it states that no reclaim was received in 1925. I assume that the agreement with respect to per diem between the Coast Line, the Georgia Northern and the Flint River is a verbal agreement (Tr. 3817). I don't know what the agreement is, but evidently there is some arrangement between the car accountants. I know what the practice is. The Pelham interests, which own some stock of the Flint River, are not connected in any way with the Georgia Northern and own none of its stock. The Atlantic Coast Line receives a reclaim of 2.49 days on terminal switching performed by it at Pelham on cars handled by the Flint River in line haul service (Tr. 3819). The reclaim is determined on the basis of the average detention of cars switched during the period of 6 months, in the same fashion that the Georgia Northern reclaim which I described was determined. We take the average detention for 6 months and the figure derived is used in settlement during the future period. There is no specified time for checks that are made [fol. 754] when either road wants a revision of the allowance. Checks are probably made every 2 or 3 years. The Equipment Register, I. C. C. Tariff 180, is an Atlantic Coast Line Tariff. It is the August, 1927, issue of the Railway Equipment Register (Tr. 3819). It shows on page 244 a connection between the Flint River and the Coast Line at Pelham, Georgia, and one between the Flint River and Georgia Northern at Ticknor, Georgia. The detention figures I gave were average detention. The difference in 1912 is possibly 40 or 50 cents and in 1925 it was $1. With the exception of the reclaim at Pelham, there is no difference between the handling of per diem for the Flint River by the Georgia Northern than between any other short line connecting with a subscriber to the A. R. A. Per Diem

Rules. The non subscriber settles direct with connections and that is what the Flint River does (Tr. 3821). The owners of the Flint River have thought for some years that they might abandon it. The heirs of the principal owner who died are now handling it. The Georgia Northern does not own it, but are doing everything they can to keep it going as they consider it a feeder. The Flint River has been losing money for the last 3 or 4 years. They earned 4.63% in 1925 on the book value, but that was before the taking out of bond interest, so I think that in spite of that they are losing money (Tr. 3822). The view of the owners is that if they cannot pay the bond interest they would just as soon scrap the railroad. The Georgia Northern is merely trying to keep the facility in the country, as the Flint River is a valuable feeder for it. I know the attitude of the Georgia Northern, as I am Auditor of both companies. There is quite a little interchange between the Flint River and the Atlantic Coast Line (Tr. 3823). The tariff to which I referred shows connections between the Georgia Northern and the Coast Line at Albany and Boston only.

L. D. SCHLEY was called as a witness and, being duly [fol. 755] sworn, testified as follows:

I am Auditor and General Freight Agent of the Hampton & Branchville Railroad. It was shown as No. 9 in South Carolina on Exhibit No. 319. It starts at Hampton, South Carolina, where it connects with the Charleston & Western Carolina Railroad. It runs 16 miles northeast where it crosses the Atlantic Coast Line (Tr. 3824) and from there continues to Cottageville, South Carolina, a distance of 49 miles. At the time we filled out our questionnaire we only operated 24 miles. I have the answer to the questionnaire with me.

(Said document received in evidence as Exhibit No. 392.)

When this questionnaire was filled out, we operated about 24 miles between Hampton and Smoaks, South Carolina. We constructed additional line of 25 miles and started operating it in February of this year. We now have 49 miles, exclusive of side tracks (Tr. 3825) which amount to

about 3 or 4 miles. We subscribe to the A. R. A. Code of Per Diem Rules. We connect with the Charleston & Western Carolina at Hampton, and with the Atlantic Coast Line at H. & B. Junction. We have 3 locomotives, 1 combination baggage and express car and 4 flat cars. All our traffic is interline. We have no local business at all. W. F. Lightsey and H. W. Lightsey own the entire stock of the road (Tr. 3826). About 80% of our traffic is forest products and the Lightseys are interested in a saw mill on the railroad. Their saw mill was located on the line about 7 years before they bought the railroad. Their lumber business is operated as a partnership. We have about 19 small saw mills on the line but they are not as big as the Lighsey Brothers mill (Tr. 3827). Our territory is adapted to truck farming and compares favorably with the produce section of Beaufort, South Carolina. The railroad will be a factor in building up the country. Several towns are already established which are not served by any railroad. About 80% of our traffic is lumber. We are encouraging agricultural inter-
[fol. 756] ests and our perishable traffic is increasing every year. We pay straight per diem with no free time and have no switching reclaim from our conections (Tr. 3828). We don't have any switching. All the business is interline to and from our road. We keep our own cars on our own road and they are not interchanged. I have prepared a statement showing comparison of earnings and per diem on our line and foreign lines on 51 inbound cars during May, 1927.

(Said document received in evidence as Exhibit No. 393.)

The foreign line per diem on this exhibit (Tr. 3829) was arrived at by taking the date of the waybill and the date the car was interchanged to us, plus 2 days. Our per diem covers actual detention on our line from date of interchange until re-interchanged, either loaded or empty. Where the cars were re-interchanged loaded, we made deduction for that time allowed the shipper for reloading. The exhibit shows the percentage of per diem to revenue. I have another statement showing the same information on 132 outbound cars in May, 1927.

(Said document received in evidence as Exhibit No. 394.)
(Tr. 3830.)

Our outbound traffic is heavier and this exhibit covers more cars than the other one. Our earnings on this business were $3,557.99 and that of the foreign lines was $15,762.51. Our per diem accruals were $368. The 132 cars covered is all our outbound traffic in May, 1927. They are not selected loads. I have also prepared a statement which is a summary of Exhibits 393 and 394 (Tr. 3831).

(Said document received in evidence as Exhibit No. 395.)

This shows the earnings on the total of 183 cars, the earnings of the foreign line, and the percent of our earnings to total. On the total, our percent of earnings was 21.1%. The exhibit also shows the percent of per diem to earnings (Tr. 3832). I also have another statement similar to exhibit 395, except that we traced through to destination each of the first 10 cars on exhibit 394 to determine the actual amount of per diem as well as the earnings until the cars [fol. 757] were actually released to destination. The cars are 9 of the first 10 shown in Exhibit 394.

(Said document received in evidence as Exhibit No. 396.)

We secured this information by tracing the cars through (Tr. 3833). We designate an interchange track between our line and our connections and our line is charged with cars from the day and hour they are placed on the track. We took these cars from the time they were interchanged from us and our time is calculated on the actual detention while we had them. We then traced them through to destination and determined the time the car arrived at destination and was released. The agent at point of destination gave me that information (Tr. 3834). The per diem on the foreign lines is the date we delivered the car to the foreign lines, subtracted from the date the load was delivered at destination. We had advice from a delivering agent when the car was released and we started out from the time per diem was charged to our railroad before the car was loaded. I have another statement, showing with respect to the same 183 cars handled in May, 1927, a comparison of our present car hire basis and other bases. We paid $535. With free time we would have paid $169 (Tr. 3835).

(Said document received in evidence as Exhibit No. 397.)

I have another exhibit which is general and states our conclusions, after reviewing the other exhibits we have introduced.

(Said document received in evidence as Exhibit No. 398.)

We are asking for 3 days' free time as our line is a heavy revenue producing line and originates about 72% of our tonnage. We have a low traffic density and feel that the divisions to us out of the joint through rates (Tr. 3836) are not high enough to offset our unreasonable proportion of car hire which we now stand. We are asking the Commission to relieve us from that car hire. We filed a formal complaint asking for higher divisions and a decision has been rendered in Docket 13833. The case was decided in 1925. The car hire was in the testimony as one of the rea-
[fol. 758] sons for the higher divisions and I judge the Commission considered it (Tr. 3837). The Commission said in the decision that we should increase our total through rate by adding a reasonable differential, inferring that the differential would accrue to us in addition to our proportion of a through rate; I mean by that to increase the total through rate. We tried to do that and got the shippers to agree to a 2¢ arbitrary over the junction point scale. Our connections were not willing to allow us the total amount and said that we should take one cent and they should take one cent. The matter went back to the Commission, and after about 4 years we reduced the arbitrary to one cent and we get that. That increase is reflected in our operating revenue for 1925. Our connections would not allow us the differential but only allowed us one cent (Tr. 3838). The case did not get back to the Commission formally. It was discussed informally with Commissioner Campbell. Our connections agreed to allow us the same revenue we were contending for but in a different way by reducing the arbitraries. We get the one cent, the net result being that our rate on lumber was raised one cent. Our other rates remained the same.

Cross-examination:

Our road is now a subscriber to the Per Diem Rules, but has no interchangeable equipment (Tr. 3839). On Exhibit 394 I computed our per diem by using the detention from

the time the car was charged to us until it was reinterchanged. I have included all the time on an empty inbound from the time we got it until the time it was given back to the connection. Item 2 we received empty on May 23 and interchanged outbound under load May 31 and charged $8 per diem. None of that per diem accrued after the car was loaded, as we place empties the day received and remove loads the same day loaded (Tr. 3840). All that per diem accrued during loading. On the next car the $5 per diem all accrued while being loaded. In some cases the [fol. 759] Charleston & Western Carolina will deliver empties to us in the afternoon and we don't take them out until the next morning, which accrues one day against those cars. On Exhibit 393, in computing the per diem, we have allowed for loading the time allowed shippers. I think that the second car on Exhibit 394, where we were the originating carrier, and have taken credit for $8 per diem, is rather exceptional (Tr. 3841). The average detention on cars we loaded was 3.6 days, but the maximum allowance we have made to the trunk lines on inbound traffic is 2 days for loading in addition to the actual time in transit. We allowed the trunk lines the same time as shippers on our line, but where a shipper takes more than that we have taken credit for the per diem in Exhibit 394. That exhibit covers 132 loads and our aggregate per diem was $363, a little less than $3 a car. Exhibit 396 covers cars 2 to 10, inclusive, on Exhibit 394 (Tr. 3842). Those 9 cars accrued $40 per diem on our rails under the method of figuring which I have explained. That is 4-4/9ths dollars per car which is about a day higher than our average detention through the year. That was the actual movement (Tr. 3843). I think possibly that is not entirely representative. About 98% of our gross operating revenue comes from freight service and the gross operating revenue figures on Exhibit 392 consists largely of revenue from freight operation. The demurrage of $124 in 1925 is fairly representative from year to year. We try to get cars out as quickly as possible but some accrue a day before we can place them. Our train starts from Hampton at 7:30 in the morning, and on cars placed to us the night before one day accrues before we place them. Our road extends to H. & B. Junction where it crosses the Atlantic Coast

Line (Tr. 3844). We connect with the Coast Line and run from there to a stub-end at Cottageville. It is a continuous line from Hampton to Cottageville without any branch line. [fol. 760] In getting up Exhibit 396, I took just the first 10 cars. It just happens that some of them happen to be high per diem cars (Tr. 3845).

R. L. MOBLEY was called as a witness and, being duly sworn, testified as follows:

I am General Manager of the Greene County Railroad and have been since August, 1917. It operates from Apalachee, Georgia, to Monroe, Georgia, a distance of 20 miles. It connects with the Central of Georgia at Apalachee and with the Gainesville Midland Railroad and Georgia Railroad at Monroe. Most of our tonnage goes to and from Monroe (Tr. 3847). We serve agricultural interests and handle cotton, cottonseed and vertilizer. We serve about 25 industries and a population of 10,000 to 12,000 people in a territory of about 175 square miles. We do not subscribe to the A. R. A. Rules. We do not switch for the Central of Georgia at Apalachee nor does it switch for us. We use their switching yards. At Monroe we have a reciprocal switching arrangement with both connections. We allow reclaim to the Gainesville Midland and they allow us reclaim, but we have no such arrangement with the Georgia Railroad. In August, 1927, we got a letter from the Assistant to the Superintendent of Transportation of the Georgia Railroad (Tr. 3848), advising that under Paragraph F of Per Diem Rule 5 the Georgia Railroad would not demand reclaims from us at Monroe and that it would not pay switching reclaims at that point because our line is a non-subscriber (Tr. 3849). The reclaim arrangement had been in effect since 1919, but they declined to allow our reclaim in April, May and June of this year, the arrangement being discontinued without notice with us. About a year after we agreed on a $4 reclaim with our connections at Monroe, a regular movement of ice developed from Athens to a storage plant on the Georgia Railroad at Monroe. The revenue on the movement was $14 per car, we receiving $7.50. The [fol. 761] traffic was switched by the Georgia Railroad usually in 2 hours' time. We paid them $2.25 switching,

$4 reclaim and per diem of $1, or a total of $7.25 as against $7.50 total revenue. When I discovered this I agreed with an officer of the Georgia Railroad on 2.1 days' detention as a basis for future reclaim and that basis was followed until March 31st, when the Georgia Railroad withdrew from the reclaim arrangement altogether. We have no freight car equipment (Tr. 3850). We are on the straight per diem basis of $1 a car per day, except with a reclaim arrangement with the Gainesville Midland. We settle for cars with our connections. One reason we do not subscribe to the A. R. A. Rules is that it would take practically another clerk to do the work and make reports of the settlements. The benefits we would derive would be more than offset by the extra expense. Our stock is owned by an individual and no dividends have been paid since I have been with the road. In 1926 we paid per diem of $5,876.38, or 11% of our gross freight revenue of $53,446.12. Our average detention was about 3 days. In 1926 lumber was 38.5% of our total traffic, yielding us gross revenue of $20,526.25. The principal destination territory of the lumber is in the east, so that our connections receive a long overhead intermediate haul without terminal or origin detention. We think that since we are an originating and delivering line with a short haul, we should have 2 days free time with per diem thereafter (Tr. 3851); also that the A. R. A. Rules should permit its subscribers to make any arrangements they desire with connections. Mr. Forrest Greene owns our stock and he has no connection with any industry served. As soon as the reclaim arrangement at Monroe was discontinued by the Georgia Railroad, we were penalized on almost every car we switched. On coal we get $2.25 for switching and it takes 2 days or longer to unload. We pay the per diem on the car and only get $2.25 for switching it.

Cross-examination:

Our line is on a per diem basis with the Central of Georgia [fol. 762] (Tr. 3852). We pay straight per diem on all cars and there is no question of terminal switching at that point. At Monroe we have been on straight per diem without switching reclaim with the Georgia Railroad since April 1 [illegible] e have a reclaim arrangement with the Gainesville M[illegible]l under which we allow them $4 reclaim and they allo[illegible] us the same. Before April 1, we had the same reclaim with the Georgia Railroad. Our switching

charges are $2.25 per car which is a reciprocal charge. It was $4 until the ice movement started. We figured the average detention at 2.11 days (Tr. 3853) and the reclaim was reduced to that. I don't know that the discontinuance of the reclaim arrangement with the Georgia Railroad has worked a hardship on us. I don't know whether or not we are better off (Tr. 3854). I have made no check to determine whether we are better off or not without the reclaim arrangement, and I don't know just how it is going to affect us. It would depend on the amount of checking we do for the Georgia Railroad. I think they have done a little more switching for us than we have done but there would not be a great deal of difference either way (Tr. 3855). The letter I read into the record from the officer of the Georgia Northern was to show that the reclaim arrangement was cancelled without notice to us and that the per diem rules were not as sacred as some roads thought, as the Georgia Railroad had made the reclaim arrangements prior thereto.

O. D. CROCKETT was called as a witness and, being duly sworn, testified as follows:

I am Traffic Manager of the Gainesville Midland Railroad (Tr. 3856). I have answered the Commission's questionnaire and will offer it subject to correction.

(Said document received in evidence as Exhibit No. 397.).

We subscribe to the car service and per diem rules and have reclaim arrangements with the Greene County Rail- [fol. 763] road. We did that because we think it fair. It is a reciprocal arrangement and we have it in effect with other trunk lines (Tr. 3857). In the time we had we were unable to answer questions 7, 8 and 9 in Exhibit 397 (Tr. 3858). I have a map showing the location of the railroad. It is in the northeast part of Georgia and is the line with two branches.

(Said document received in evidence as Exhibit No. 398.) (Tr. 3859.)

The line is also No. 6 in Georgia on Exhibit No. 319. Our total main line mileage is 74 miles, being 43 miles from

New Holland, Georgia, to Athens and 31 miles from Belmont to Monroe. The road forks at Belmont, the main line running from Gainesville to Belmont (Tr. 3860). I have prepared a statement covering the description of the railroad taken from the proposed report in Finance Docket 5955, before the Interstate Commerce Commission, dated April 30, 1927. The statement consists of excerpts from the report (Tr. 3861).

Special Examiner Rice: I understand the last paragraph has been stricken out.

Mr. Streyer: Yes, sir.

(Said document received in evidence as Exhibit No. 399.) (Tr. 3862.)

The Witness: I have a statement of our revenues and expenses for the years 1921 to 1926.

(Said document received in evidence as Exhibit No. 400.)

I have also prepared a statement showing the consist of our total traffic handled in line haul service.

(Said document received in evidence as Exhibit No. 401.)

I have made a partial analysis of the car hire of $26,693.84 shown in Exhibit No. 397 as having been paid in 1925 (Tr. 3863). That amount of per diem was reached after adding the reclaim paid connections and deducting the reclaim paid to us, and also includes $193.73 paid on mileage [fol. 764] cars. The reclaim paid us by connections was $2,796 and the reclaim we received from connections was approximately $2,068. We also report and pay all per diem on cars delivered to the Greene County Railroad. That was included in the gross amount of per diem paid in 1925, but we recovered it from the Greene County Railroad and deducted it to get this figure. The deduction is shown on Exhibit 401 and has no bearing on these figures (Tr. 3864). The statement of per diem paid in 1925 in Exhibit 397 of $30,532 is in error as that is the 1926 per diem. The correct amount is shown on Exhibit 400. I corrected the figure at one place in Exhibit 397 but failed to correct it in the other place (Tr. 3865). I also have an analysis of the cars in the per diem count for 1925 and for the first 8 months of 1927. In 1925 we had 422 cars on which we paid no per diem, 1241

cars on which we paid one day per diem, 6147 cars on which we paid 2 days per diem or more, the total number of cars being 7,810 and per diem payments being $26,693.84; the average payment was $2.40 per car. We also had 208 cars on mileage on which we paid $193.73, or 98¢ per car, the total per diem and mileage cars being 8,018. We have 3 flat cars. Our records show 21 box cars, but they are dilapidated and not used (Tr. 3866). We have 3 usable flat cars, but they are not shown in Exhibit 397. About 10% of our traffic is strictly local. 10% was intermediate or overhead traffic and on the other 80% our line was either originating or terminating carrier (Tr. 3867). We are an originating or terminal carrier to the extent of 80% of our traffic. We want 2 days' free time with per diem thereafter on line-haul business and the present reciprocal basis of switching reclaim continued. I made an analysis of about 50 cars picked at random. On those cars we paid an average of 40% of the per diem and received an average of 22% of the revenue. The figures were both ways, but in some cases we paid as high as 50% of the per diem and received 15% [fol. 765] of the revenue. In some instances it went the other way. The figure I have given was the average of all those cars (Tr. 3868); that was 50 cars picked at random.

Cross-examination:

Exhibit 400 does not show the net railway operating income. The deficit shown is not net income but the net railway operating income can be computed from the figures on Exhibit 400. On that exhibit in 1926 our total income was $26,000 plus (Tr. 3869). From that we would deduct hire of freight cars, rent of locomotives and joint facility rents to get net railway operating income. In that way that figure could be produced each year from the figures shown in Exhibit 400. The same method would be used in every year. (Tr. 3870). To get net railway operating income in 1926 we would take the total operating income of $23,118.15. We would then put in $730.44 joint facility rent and deduct hire of freight cars $30,532.03, rent of locomotives $28, and joint facility rents $3,542.63. That leaves a deficit of $10,211.07 in net railway operating income (Tr. 3871) for 1926. We do the same thing in previous years, except that on Exhibit 400 the amount of non-operating income is not shown. I have it for 1924. It was $405 rent of locomotives,

$112 rent of passenger train cars, and $703.69 joint facility rent (Tr. 3872). In that year we take out $31,242.53 hire of freight cars and $3,797.05 for joint facility rents, leaving $525.05 income. In getting my percentage of per diem to revenue, I took inbound cars. I did not trace the cars to find out actually how much per diem accrued on foreign lines, but added 2 days to the total time in transit, as shown by the waybill dates and the receiving date at destination on our line (Tr. 3873). We took the waybill date and the date the cars were interchanged to us as the connecting line's per diem and added 2 days for loading. In computing our per diem we included the time from the receipt of the car until it was released by the yard force. We did not include the per diem that accrued while the empty car [fol. 766] was being sent back. We want 2 days' free time with per diem thereafter and would like to have it made retroactive to March 15, 1920. We want that allowance because we think the present basis is unreasonable to short lines. We are an originating and terminating line with short mileage (Tr. 3874). When I say it is a s[illegible] line, I mean it does not haul freight many miles. I would not want that basis applied to the overhead traffic, nor to our local traffic as that is negligible and would not require more than 5 cars a day to handle it. We only want the 2 days' free time on interline traffic which originates or terminates on our railroad. All the connecting lines who jointly handle the traffic with us should furnish it (Tr. 3875). If there was an originating or terminating line at the other end, with a shorter haul than ours, I don't think it should participate in giving us the free time. The free time might be prorated on a mileage basis. I think that is much more logical but in deference to the difficulties which the lines might encounter in applying it we have adopted the 48 hours' free time as a practical solution of the problem. We do not undertake to say just how the free time should be distributed, but the lines that participate in the traffic should arrange it among themselves so as to relieve us. If an originating carrier, on traffic inbound to us, has a haul no longer than ours, it should participate to some extent, if it has a greater traffic density than we have and is what is called a standard line (Tr. 3876). The application of my theory would depend to a great extent upon the traffic density of

the lines that participate and also financial condition as between the weak and standard lines, but a long-haul carrier in weak financial condition would not be much better able to stand the per diem than we are. I have a concrete rule under which the 2 days' free time could be prorated among [fol. 767] our connections. After the per diem has been figured on a straight per diem basis, our reclaim of 2 days on line-haul traffic should be deducted. The balance could be prorated among the carrier on the basis of the revenue each carrier received from his haul of traffic during the month or year (Tr. 3877). That is a revenue prorate of the 2 days and would not necessarily depend upon density or financial ability to pay. My idea would be to prorate the total amount on the basis of revenue, in the case of each individual shipment, so that a carrier which handled a smaller amount of traffic, or one shipment, would participate only to that extent. I would favor the mileage basis of car hire if it was practical. In my opinion we will pay more with 2 days' free time than we paid on a mileage basis (Tr. 3878). I mean by "mileage basis" the basis under which private line cars are handled. We handle 208 cars on a mileage basis. They travelled an average of 62 miles total mileage inbound and outbound, about 50% loaded and 50% empty. Our total payment was 93¢ a car or a total of $193.73. I can't tell what the per diem basis would be on those 208 cars, but I can give the figures on the total cars on which we pay, and by applying the 62 mile average can tell what it would be on the total cars (Tr. 3879). On the per diem basis we paid $26,692.84 on 7,810 cars. At $2 that would be $15,620. Deducting that from the per diem would leave $11,073.84. 7,810 cars by 62 miles the average haul, and 208 mileage cars at 1½¢ a mile would be $7,263.30 which is what we would have paid for all cars on a mileage basis. We would have paid $11,073.84 with 2 days' free time. We consider the mileage basis to be proper, but if the trunk lines prefer to compute the remainder of the per diem on the per diem basis we have no objection (Tr. 3880). By asking for free time we have sought to approximate as closely as possible the cost of cars on a mileage basis and we would like to have that made [fol. 768] retroactive to March 1, 1920. Only during 3 years in 22 years have we made money, and in 2 of those

years we made just enough to pay operating expenses. A larger division of the through rates would not suit us. If we can't have anything else, we would like to have more revenue. Everything we do is to increase our revenue, of course, but in this case our object is to get an equitable basis for the settlement of car hire. We don't believe car hire can be resolved into a question of divisions, since each arrangement should be settled on its own merits without reference to divisions (Tr. 3881) except where it is necessary to arrive at a reasonable basis. Divisions are as highly competitive with us as the rates, and the question of raising divisions must cover many other of our operating disabilities, before we can be put on a basis where we will earn our operating expenses and a fair return, which we have never done. Our profit and loss account stands at $700,000. After a series of continuous deficits since 1905, we have reduced expenses as much as possible and still cannot make the road pay. The road has been investigated and is efficiently operated. Our operating ratio before we came to car hire was about 88. It is a question if any further deduction in expenses is economy (Tr. 3882). When many of our divisions were fixed, the road was narrow gauge and there was no car hire. We now receive approximately the same percentages as we did then, although some new traffic is developed and the Fourth Section basis has been put in. I think our most important divisional bases are as much as 30 years old and were put in when the railroad was narrow gauge. I am not familiar with the operation at that time (Tr. 3883). For the last 6 months I have been trying to get my divisions increased for the reasons stated. I have been in all departments but I am now in the Traffic Department. If our connections don't give us higher divisions, we except to ask the Commission, but if we do that there are going to be so many obstructions that we don't want [fol. 769] this millstone around our necks. Our divisions are highly competitive, and unless we have an order of the Commission preventing our connections from routing traffic against us, we would lose the traffic by increasing our divisions above a certain point. 80% of our traffic is absolutely competitive and 100% is competitive, more or less (Tr. 3884). Recently, we had up the question in one case. We asked a connection for an increase in divisions and they asked us to raise the rate, but that could not be done

as it would kill the traffic. The competitive feature would affect us on all of our traffic, more or less, and on 80% of it absolutely. On the 80% of our traffic which we originate, we are the originating or terminating carrier, but the Southern Railway could handle it. We have 4 competitive points and the competitive traffic originates at those terminals (Tr. 3885). 5 other lines could handle it as well as we could. To compile the data and exhibits, etc. to present a divisions case would cost us $500 or $600. We would probably have to have an attorney and go through the receivership sale and everything. I estimate the cost of preparing the case $500 or $600 and the attorney would cost us $2,000 or $2,500. That would include only the printing of the exhibits and not the printing of briefs (Tr. 3886). Our reclaim of 2 days should be prorated among our connections on a revenue basis, but I do not think that the total amount of car hire should be prorated among all lines on that basis. We do not contemplate prorating the total amount of per diem. We are going to prorate all of the 2 days' free time, but it is not our plan to add the total amount of per diem prorated among the carriers on a revenue basis. We contemplate a reclaim of 2 days per load (Tr. 3887). We would pay per diem on empty cars to get it back to the connection so that our 2 days' free time would apply to each load each way. The free time would cancel a large pro- [fol. 770] portion of the free time on cars held by shippers and consignees. My theory is to figure per diem on the regular basis, then take the number of loads inbound and outbound, multiply them by 2 and take the amount derived by that process and prorate it among the carriers which handled the freight on a revenue basis (Tr. 3888). Somebody asked me and I said the total amount should be prorated. It would be agreeable to us to have a test made for, say, 3 months and then settle for a certain period upon the basis of that test. We have divisions of revenue.

I. C. JOHNSON, having been previously called as a witness, was recalled and testified:

I am Auditor of the Georgia, Ashburn, Sylvester & Camilla Railway Company. The road has answered the Commission's questionnaire in this case (Tr. 3889).

(Said document received in evidence as Exhibit No. 402.)

I have a map of the railroad.

(Said document received in evidence as Exhibit No. 403.)

The road starts at Camilla, Georgia, where it connects with the Atlantic Coast Line, and runs to Bridgeboro, Georgia, where it connects with the Georgia Northern, thence to Sylvester where it connects with the Atlantic Coast Line, and thence to Ashburn where it connects with the Georgia Southern & Florida. The total mileage is 49.98 miles (Tr. 3890). When the road was completed, those towns contained about 1,550 inhabitants. Today their population is about 7,100. We handle outbound products from oil mills, peanut mills and fertilizer plants, and receive a haul on part of the articles manufactured from raw products which we originate. This is true of the oil mills and peanut shelling plants where we handle a part of the outbound products. This is also true of raw products inbound from connecting lines (Tr. 3891). Our raw products move to Ashburn, Sylvester and Camilla, and the manufactured [fol. 771] products move principally to Georgia and Florida. The line was built about 1908. It went into receivership and was sold in 1922. The present company purchased the portion from Ashburn to Camilla, about 50 miles, and began operation in June, 1922. At that time our principal traffic was lumber, naval stores and forest products. The old Hawkinsville & Florida Southern Railroad, of which this road was part, was about 100 miles long and ran from Hawkinsville to Camilla (Tr. 3892). Our company purchased the part from Camilla to Ashburn and the rest of it was abandoned. Our stock is held by 200 or 300 stockholders. The people organized and got together to keep the road from Ashburn to Camilla running, as they were interested in that part of it (Tr. 3893). It was thought that if they acquired it, it would maintain itself. They got together and got Mr. Pidcock interested, but the people along the line owned more than 50% of the stock. The road has subscribed to the car service and per diem rules agreement since 1922 and settles with car owners direct at the established per diem rate, and with private car owners at the mileage rates. We perform switching, local, intermediate

and terminal interline service, and our principal traffic is interline, originating or terminating on our road (Tr. 3894). A very small part is bridge traffic. We have practically no local traffic and very little switching upon which we make reclaim. There are some instances where our lumber divisions are in excess of the local rate to a slight extent and we make more out of the interline traffic than we would if handled locally. That is not unusual with lines in this vicinity. Glenn's Tariff, I. C. C. A-541, publishes rates on lumber and articles taking the same rate from local stations on the Atlantic Coast Line south of Savannah to various points in Pennsylvania (Tr. 3895) on the Pennsylvania Railroad. The rate is 34½¢ per hundred pounds. It is divided by first allowing to the Pennsylvania 14¢ a hundred pounds beyond Norfolk, Virginia. The lines south of Nor- [fol. 772] folk are allowed 20½¢. The Atlantic Coast Line gets 9.4¢ and the balance of 11½¢ is divided on Jesup, Georgia, after 2½¢ is deducted to cover terminal and transfer at Norfolk (Tr. 3896). Of the 8.6 remaining between Jesup and Norfolk, 9% goes to the Atlantic Coast Line and 91% to the Southern. Thus the Atlantic Coast Line gets 10.2¢ to Savannah. There is a terminal charge at Norfolk of 2.5¢. The Southern gets 7.8¢ to Norfolk and there is 14¢ beyond Norfolk. The distance from Borroughs, the origin, to Savannah is 11 miles. The Coast Line's local rate on lumber for 11 miles equals 3.51¢ per hundred pounds. From Ways to Savannah, 16 miles, the local rate is 4.17¢ a hundred pounds. On shipments under these rates the Coast Line would have terminal detention at both ends but get 10.2¢ per hundred pounds for the same haul on a carload of lumber originating at either point and going to Philadelphia (Tr. 3897). They have no destination detention but deliver to the Southern. The rate of the A. B. & C. from Dickson, Georgia, to Philadelphia, Pennsylvania, is 34½¢. It receives 39% to Offerman or Thalmann of the 20½¢ south of Norfolk. This gives them 8¢, while their local rate to the junction is $3.05 per hundred pounds. The division exceeds the local rate (Tr. 3898). This situation is general in that part of the country, and our line does not differ in that respect from the trunk lines in the same territory. The idea of the fellow originating the traffic is to protect the long haul and that happens in nearly every section of the country.

We apply the standard demurrage rules, allowing to consignees or shippers 48 hours' free time, plus Sundays, holidays and bad weather (Tr. 3899). We have no average agreement with shippers, but if application were made we would give them such an agreement on account of competition. We have no freight cars moving in interline service. We have built two wooden box cars since the questionnaire [fol. 773] was filed. The 7 cars shown in the questionnaire are old. They are really not interchangeable. We depend upon outside equipment for interchange service. We are not satisfied with the operation of the per diem rules on our railroad as we are principally an originating or terminal carrier (Tr. 3900) and the day basis of computing per diem is unfair to us because it does not properly allocate per diem to car owners as between our road and our connections as car users. The fact that our connections may be car owners does not change this situation. Also about 35% of our traffic is handled by our connections as intermediate carriers and on it they have no per diem beyond the interchange with some other foreign line, and detention is restricted to the actual haul. We think we should have free time with payment thereafter at the per diem rate. Our detention exceeds 3 days, so we could hardly expect to come out without some reasonable payment. If we received 2 days free, we would not collect more in demurrage from our patrons than we paid in car hire (Tr. 3901). We would still have a substantial car hire expense. Our chief commodity is the products of agriculture on which we earn about $15 a car and pay about $4 per diem. In 1922 our average detention was 3.5 days; in 1923, 3.9 days; in 1924, 4.2 days; and in 1925, 4.5 days. I have a statement showing 53 inbound loads and 43 outbound loads handled in 3 months of 1927, showing a comparison of per diem to earnings. The items were taken at random.

(Said document received in evidence as Exhibit No. 404.) (Tr. 3902.)

On the 53 inbound cars we received 22% of the earnings and paid 36% of the per diem. Our per diem was 10% of the earnings; whereas, on foreign lines it was but 5½¢. I have prepared a statement showing the relation of our per diem to revenue for 1925 and 1926.

(Said document received in evidence as Exhibit No. 405.)

In 1925 our per diem was 12½¢ of our freight revenue, and in 1926 was 11½¢. I have also prepared a statement showing our car hire cost on our present basis and on the basis of 2 days' free time, using the 101 cars shown in the previous exhibits (Tr. 3903).

[fol. 774] (Said document received in evidence as Exhibit No. 406.)

On these cars we paid $282 on straight per diem and would have paid $125 with 2 days' free time. We subscribe to the car service and per diem rules agreement because we perform some switching service and could not get reclaim as a nonsubscriber. We prefer to make our settlements direct with our connections for all cars, as it would save us a lot of accounting work in making settlements with a legion of car owners all over the country. There is no connection between the Georgia Northern, the Flint River & Northeastern and the Georgia, Ashburn, Sylvester & Camilla. They are operated by the same management and it is economy to have one officer on the 3 roads (Tr. 3904). The owners got together under one management to produce economy. About 30% of our traffic consists of agricultural products. There is no connection between the three roads I have named. They are operated by the same officers as a matter of economy (Tr. 3905).

Cross-examination:

The industries shown on Exhibit 402 as owning 50% of the stock of this road are the people interested in the oil and oil, cotton and peanut mills at Camilla. No one man has a large lump of stock nor is control vested in one man. On the cars shown in the answer to question 10 of Exhibit 402 we did get a reclaim and that answer should be corrected. I would say our reclaim equaled the per diem payment of $459. I don't know how much it was per car (Tr. 3906). It was around 3 or 4 days. I don't recall our reclaim in 1925 but at some stations it was as high as 4 days. On the local traffic shown in Exhibit 402 we might have used foreign equipment or that of the Georgia Northern. I computed the per diem on the inbound cars shown in Exhibit 404 on our railroad from the time of interchange to us until the

empty was returned to our connection. We have included all per diem that accrued between the date we got the car and the date we sent the car back after it was empty (Tr. [fol. 775] 3907). On cars sent back under load we have included the per diem between the date we got the car and the date the consignee released it. On outbound traffic I have included in our per diem the per diem which accrued from the time the car was sent in and the outbound load until we interchanged it outbound. On foreign lines, I computed per diem on inbound traffic by the waybill date at point of origin and the date of interchange with us, plus 2 days for loading the car (Tr. 3908). Our detention has been increasing because in 1925 we handled considerable paving material which was delayed by the consignees. We collected $2,176 demurrage in 1925. In the years after 1923 we handled more traffic but that would not have anything to do with car detention. I don't know why the detention has been increasing in each year (Tr. 3909). We are asking for 2 days' free time with straight per diem. I have no figures, but I think that on the mileage basis of 2¢ a mile the result would be about the same as with 2 days' free time. I don't think the mileage basis would be fair to the trunk lines (Tr. 3910), as it would enable short lines to hold the cars longer than it would if they were on a per diem basis without having a penalty. Our records show our total car mileage for 1926. In that year we had 265,000 car miles, loaded and empty, which included some tank cars (Tr. 3911). We settle for private line cars on a mileage basis and if that was deducted from the total mileage it would give us the total car mileage.

A. D. FOWLKES was called as a witness and, being duly sworn, testified as follows (Tr. 3912):

I am Auditor of the East Carolina Railway. It operates from Tarboro, 39 miles south to Hookerton, North Carolina. At Tarboro we connect with the A. C. L. and at Farmville, 26 miles from Tarboro, with the Norfolk Southern. At Tarboro we serve a number of mills and plants located on the [fol. 776] A. C. L. which performs a switching service for us. At our 5 other stations we serve a variety of industries, including cotton gins, gasoline stations, tobacco plants, tobacco warehouses, etc. (Tr. 3913). 95% of our traffic is

interline and originates or terminates on our rails. 5% is local traffic. We have no intermediate traffic and perform very little switching. Our traffic is seasonal. In 1926 we handled 5,718 carloads, of which 95% moved in interline service and 5% in local service; 2,624 were outbound and 3,094 inbound. The nature of the traffic is such, however, that we cannot load the same car inbound and outbound. To show how this works, I have prepared a statement of loaded and empty car miles for the years 1922 to 1926, inclusive (Tr. 3914).

(Said document received in evidence as Exhibit No. 407.)

The statement shows that 37% of our car miles were empty. Our principal outbound commodities are unmanufactured tobacco, cotton, sand and gravel. The inbound commodities are hay, coal and fertilizer. Our local traffic, composing 5% of our total, is principally cottonseed. We handled approximately 400 cars in switching service in 1926 on revenue of $2.25 a car or $1,030. We perform this switching at Farmville for the Norfolk Southern and make reclaim on it for 4 days per car (Tr. 3915). In 1926, the Norfolk Southern switched about one dozen cars for us at Farmville and the Atlantic Coast Line switched about 600 cars for us at Tarboro. The Norfolk Southern reclaims on us for 4 days per car, but the Atlantic Coast Line does not. I think we have been a subscriber to the per diem rules agreement since 1905. The A. C. L. does not make reclaim on us because the terminals are operated jointly. We own 12 box cars, 2 flat cars and 5 gondolas. They are all interchangeable, but it is our practice to keep them on our line. In 1926 we earned only $815 in per diem on our cars (Tr. 3916). I don't know why we subscribe to the A. R. A. rules. As I recall it, the A. C. L. persuaded us to subscribe some [fol. 777] 20 years ago. The only advantages I see are that as a nonsubscriber we would get no switching reclaim and no per diem on our cars. Our reclaim, however, is negligible and we do not desire to have our cars on foreign rails. We object to Rule 18 which prohibits the payment of per diem to a nonsubscriber and to paragraph f of Rule 5 which prohibits the payment of switching reclaim to a nonsubscriber. We are not satisfied with our present per diem basis because of paragraph (b) of Rule 6 which prohibits reclaim or free time to short line railroads. I under-

stand nearly all the 300 nonsubscriber lines in the United States now have special agreements with their subscriber connections. In 1926 our gross freight revenue was $175,083, of which about 5% or $8,754 was local revenue (Tr. 3917). Our gross interline freight revenue was approximately $167,329, of which 16.22%, or $27,088.25, was car hire expense. I have a statement of our revenues and expenses for 1925.

(Said document received in evidence as Exhibit No. 408.)

In 1926 we collected $1,218 demurrage from our patrons. We are parties to the National Car Service & Demurrage Rules. We want the same car hire basis which we had during Federal control, which was per diem with a free time allowance of 2 days (Tr. 3918). This basis was generally recognized by the Railroad Administration, and we feel that it would be fair in consideration of our local conditions. We are a terminal and originating carrier and prorating car hire on a time basis as between car users is unfair. Our connections can move a car in long road haul while it is standing still on our road, for switching, spotting, weighing, etc. and during the free time to shippers and consignees. My company was incorporated in July, 1898. The incorporator constructed about 5 miles when his money gave out. The A. C. L. advanced him enough money to complete the construction to Farmville (Tr. 3919). In exchange for this, the capital stock of the company became [fol. 778] and remains the property of the Coast Line Railroad. In May, 1899, Henry Clark Bridgers became the lessee of the road and its operator, paying a stipulated rental for it. Bridgers is the railway and the Atlantic Coast Line owns the physical property. In 1906, the line was extended 13 miles from Farmville to Hookerton. I have a statement of our income account for 1926.

(Said document received in evidence as Exhibit No. 409.) (Tr. 3920.)

This income account is taken from our annual report to the Commission. Exhibit 408 is a statement of our railway operating revenue and the expenses appear on Exhibit 409 (Tr. 3921). Exhibit 408 shows operating revenues and

Exhibit 409 is a statement of income account for 1926. Our net railway operating income ought to be on Exhibit 409. Our net income from railway operations in 1926 was $19,069.89 (Tr. 3922). I don't know from this report what our book investment was in that year. I think it was approximately $285,000 for the corporation and $46,312 for the lessee. The Coast Line does not reclaim against us for cars handled in terminal switching by it at Tarboro because the cars are never in their accounts. They remain in our accounts all the time. They spot the cars for us as they don't want our engines going on their track and interfering with their operation (Tr. 3923). The cars are in our possession all the time and we pay them a switching charge on competitive business. On local traffic the charge is taken care of in the joint facility rents that we pay. We have a contract covering this arrangement. The switching is performed by the Coast Line on the terminal operated jointly by both roads. The operating contract contains all the detail of the arrangement (Tr. 3924). I don't recall how long the contract is. The car miles shown in Exhibit 407 include miles made by private line cars. We use only tank cars and refrigerator cars on which I think the rate is 1½¢ a mile, but I am not sure (Tr. 3925). I can deduct our pri-
[fol. 779] vate car line mileage from our total car mileage for 1926 and give us the car mileage of per diem cars. I can also furnish the number of inbound and outbound loads handled in per diem cars in that year (Tr. 3926).

Examiner Rice: If there is nothing further, gentlemen, the Atlanta hearing will be adjourned.

[fol. 780] Hearing at Washington, D. C., March 26 to March 30, inclusive, 1928

SHIRLEY SEWARD, having been previously called as a witness, was recalled and testified:

I am Midwest representative of the American Short Line Railroad Association and represent the Tabor & Northern Railway Company, under authority of a letter from the President. The answer of this carrier to the Commission's questionnaire has been prepared.

(Said document received in evidence as Exhibit No. 410.) (Tr. 3936.)

This exhibit covers the year 1926. I have a map of the railroad.

(Said document received in evidence as Exhibit No. 411.)

On this map the east and west solid line at the top is the Burlington Railroad. The northeast and southeast solid line is the Wabash; and the dotted line is the old road of the Burlington which that carrier still owns. There is no connection between the Wabash and Burlington, but there is a connection at point numbered (3) between the Wabash and the old road of the Burlington. The circle at the top is Malvern, Iowa (Tr. 3937). The Burlington connects with the Tabor & Northern at point numbered (5) from which the Tabor & Northern runs 9 miles southwest to a stub-end at Tabor, Iowa. In 1906, the Burlington moved its main line such a way as to pass up Malvern but kept its old tracks and arranged with the Tabor & Northern for the latter to operate its own train to Malvern and perform the Burlington switching on Burlington tracks in the Malvern district. The Tabor & Northern received its line haul division and also a contract charge per car load for hauling between the Tabor & Northern connection and the Malvern station. I regard this as an operating contractual arrangement which should not be included in switching revenue. The same rate per carload applies when the Tabor & Northern [fol. 781] switches for the Burlington, but the latter is covered by tariff (Tr. 3938) and contract, whereas the line haul switch described is covered by contract only. Section VI of the contract covers the subject. I have the preamble and Section VI of the contract dated February 7, 1912.

(Said document received in evidence as Exhibit No. 412.)

The rate of $2 per car was increased to $3.50 in January, 1919, retroactive to November 1, 1918. The same arrangements apply between the Tabor & Northern and the Wabash but not by contract. In 1914, the demands of Malvern compelled the Wabash to make a connection with the old line of the Burlington at point numbered (3) on the map (Tr. 3939). The Burlington had the traffic through this point handled by the Tabor & Northern, which also switches

cars between the two main lines in intermediate service and switches Wabash cars to and from industries at Malvern. The Wabash allows the Tabor & Northern the same divisions as the Burlington and also pays $3.50 per car for the operation over the Burlington under tariff authority. The Tabor & Northern is 9 miles long. The Burlington old line is about 2 miles long and it is about three-quarters of a mile from the Burlington station to number (4) on the map and about 1½ miles from number (4) to the Tabor & Northern connection. In the center of the map, under the statement of mileages, the statement 4 to 11 one and one-quarter miles should be 4 to 5 (Tr. 3940). I have a statement of the consist of interline carloads to the Tabor & Northern handled in 1925.

(Said document received in evidence as Exhibit No. 413.)

Of a total of 555 cars, 340 were outbound and 215 were inbound. In addition 326 cars were handled for the Burlington and Wabash. 337 of the 340 outbound loads were grain and livestock. Tabor has a population of 1,050 people and the railroad serves a population of about 2,000 people in an area of 100 square miles (Tr. 3941). I have an operating financial statement of the road for 1926.

(Said document received in evidence as Exhibit No. 414.)

The net income of $1,522.23 is misleading because of de- [fol. 782] ferred maintenance. 700 ties were put in, whereas more than 3,000 should have been put in which would have left a substantial deficit. The switching revenue of $3,083.50 appears in the road's annual report to the Commission, but I do not think they are switching revenues. They are amounts paid the Tabor & Northern by the Burlington and Wabash for service performed on Burlington tracks under contract (Tr. 3942). I have prepared an analyses of the carload freight revenue of the road for 1926.

(Said document received in evidence as Exhibit No. 415.)

In this exhibit I refer to terminal and intermediate switching because it is easier to understand the situation, but the revenues come from the operating contract. In Exhibit 410, I have put a question mark after terminal and intermediate switching because it is easier to understand

the situation but the revenues come from the operating contract. In Exhibit 410, I have put in a question mark after terminal and intermediate switching. In answer to question 10, I have shown terminal switching of $1,141 on 326 cars handled for the trunk lines but I do not believe the figures belong there (Tr. 3943). 82.3% of the line haul cars interchanged to this road in 1926 by the Burlington were Burlington cars. The I. C. C. valuation of the property was $120,000. The capitalization is $75,000, consisting of a bond issue of $43,000 owned by the Burlington and $32,000 in common stock. The largest individual stockholder has 26 shares. 3 industries at Tabor have a total of 50 shares. The maximum grade on the road is 2.78%. The maximum curvature is 7½ degrees. There is practically no grading or ballast. There are 5 bridges and 9 culverts. Tabor is the highest point in Iowa. The road was built in 1888 because of the location of the college at Tabor (Tr. 3944). The citizens controlled it until 1889 and from then until 1920 it was controlled by one man who owned 482 shares of stock. Notice was given in June, 1920, that operation would be suspended because the track was unsafe and be- [fol. 783] cause a locomotive was needed as the road had never owned a locomotive but had rented one from the Burlington. It owns one now. A receivership suit was brought but before it was ended an agreement was reached to solicit $27,000 in public subscriptions to be paid to the owner. He was to pay all debts except the bonds of $43,000 which were to be assumed by the purchaser. The owner cancelled the note of $28,128 (Tr. 3945) and paid floating debts to the amount of $18,560. Subscriptions of $31,000 were raised and the stock of the owner was cancelled. 620 new shares were issued, making a total of 644 outstanding. Since September 1, 1920, the car hire arrangements with the Burlington and Wabash have been per diem with 2 days' free time. Before that the Wabash charged the Tabor line straight per diem, the connection being established in 1914. With the Burlington, the present arrangement has been in effect since early in Federal control. I do not know what the arrangements were prior to then (Tr. 3946). The road paid two connections $641 in car hire in 1926. On a per diem basis it would have paid $1,734 or an increase of $1,092. I get this figure by taking $1,833 days on line and subtracting 99 days on account of 33 tank cars which are on

a mileage basis of 33¢ a car. There was no per diem on cars handled to industries on the Burlington and between the Burlington and Wabash, as that service was performed under contract. The payment for mileage cars depends on the mileage, but the total mileage including the Burlington mileage is 11 miles at 1½¢ a mile, which makes 33¢ for the round trip (Tr. 3947). It assumes a round trip of the car over the line. That trip might be made in a week or in 3 or 4 hours. The number of days on line, as shown in Exhibit 410, includes the tank cars, and to give the payment under straight per diem those cars should be deducted. To get the per diem remaining, I deducted dollars instead of days, as the number of days the tank cars were on line could not be secured (Tr. 3948). The tank cars remained there less [fol. 784] than any other type of cars. There is no objection to the mileage on tank cars and they are out of the case. We would be willing to pay mileage on all cars. The number of days on line applies to cars of all classes, including tank cars. Our present basis of car hire is satisfactory and neither connection has made any attempt to cancel it. The road appears in the case to ask that its present basis be left undisturbed and that the A. R. A. keep its hands off (Tr. 3949). 8.3% of the cars interchanged to us by the Burlington belong to that road, and as to the balance, it is no business of the car owner to dictate to the Burlington on the arrangement with the Tabor & Northern as long as the Burlington pays the car owner the per diem. This road is glad to testify here, but we refer to the inclusion of the new rule in the per diem code. The A. R. A. has told the Burlington that it must force the Tabor & Northern to pay straight per diem. I have written letters to the effect that the arrangement is satisfactory to the Burlington (Tr. 3950). I think I have them here, but hesitate to introduce them without discussing them with the officers of the railroad who wrote them. The Tabor & Northern handles passenger, mail, express and freight business. The l. c. l. freight is handled in a motor car trailer and the carload freight is handled by steam locomotive; the passenger service by 3 gasoline motor cars. The passenger train makes two round-trips daily and the freight train moves as the traffic demands (Tr. 3951). In 1926 it made 224 round trips.

Cross-examination:

The only operation over the dotted line on Exhibit 411 is by the Tabor & Northern under operating contracts with the Burlington. The Wabash pays $3.50 per car, but I don't know what arrangements exist with respect to that payment between the Wabash and the Burlington. That charge is collected from the Wabash under a tariff (Tr. 3952); it is a switching tariff. It is not a terminal switching by the Tabor & Northern as it is a contract operation [fol. 785] and is a matter between the Burlington and the Wabash under the contract between the Tabor & Northern and the Burlington. There is no mention of that in Exhibit 412 and I do not know that there is in the rest of the contract (Tr. 3953). I do not know how the Tabor & Northern could form a switching service over the rails of another carrier. If the Burlington performed service over its tracks, shown by the dotted line, it would be Burlington service, but the Tabor & Northern performs the service for the Burlington. That fact does not change the character of the service, but if it is a Burlington operation, I should think the Burlington would collect the money (Tr. 3954). The Tabor & Northern performs the service for the Burlington under the contract and the Burlington publishes a charge as a switching arrangement. On Burlington line-haul traffic over the Tabor & Northern, the Tabor & Northern gets divisions and also $3.50 a car which is covered by contract. Where it performs a terminal switching service for the Burlington that is covered by tariff (Tr. 3955). The Burlington has no crew at Malvern and reaches its industries through the service of the Tabor & Northern. That is a tariff arrangement also and is published in switching form. When the road performs a service for the Wabash, it is covered by a tariff published by the Wabash. The service for the Burlington to Burlington industries is performed under published switching tariff (Tr. 3956). The Tabor & Northern acts under a contract with the Burlington as its agent. That is not so in the case of the Wabash, however, because of its contract. If the Burlington performs service on a car from the Wabash, it would be terminal service by the Burlington. The fact that the Tabor & Northern is employed to do it does not change the character of the service (Tr. 3957). It is still terminal switch-

ing for the Burlington but not for the Tabor & Northern and the service is not performed by the Tabor & Northern in its own behalf. The Wabash publishes the tariff under which the Tabor & Northern gets the $3.50. That tariff [fol. 786] allows the charge to the Tabor & Northern but I do not know if it is an absorption tariff. I think that under the tariff the charge of the Burlington is absorbed and the Burlington turns it over to the Tabor & Northern as its agent. In computing the days that the cars were on the line of the Tabor & Northern, I have not included the time used in this service. The figures include only the line haul traffic. There is no per diem on cars moving under the $3.50 charge; there is what is equivalent to unlimited reclaim (Tr. 3950). The road gets unlimited reclaim in switching service and 2 days' free time on line haul service. For handling a car from Tabor to the Wabash or Burlington, the Tabor & Northern gets its division and in addition $3.50 a car. For handling a car between the Wabash and the Burlington it gets only $3.50. The payment of $3.50 in addition to the division is under the contract (Tr. 3960). If the Burlington performed the switching from the Wabash to the industries on the Burlington it would get a switching reclaim but it would not be an unlimited reclaim. What I meant was that there is no penalty on the Tabor & Northern for undue detention. If the Burlington did it there would be a penalty beyond the reclaim allowance. The Tabor & Northern has no fixed allowance (Tr. 3961).

A. W. Carey, having been previously called as a witness, was recalled and testified (Tr. 3962):

At the Atlanta hearing the witness was asked to give consideration to a practical answer to the question of whether some adjustment other than the use of reclaim could be devised to make the Birmingham Southern whole if it were placed on the per diem basis instead of the modified demurrage basis. We have considered this subject and wish to explain how the operation of the Birmingham Southern rule compels the Birmingham Southern and its trunk line connections to perform wasteful services. Under the Birmingham Southern rules, if a foreign car is [fol. 787] damaged on the Birmingham Southern so that

repair parts must be received the road must pay for the detention waiting the material at $2 and $5 a day until the car is repaired and delivered to a connection under Per Diem Rule 8, if the Birmingham Southern was a subscriber (Tr. 3963) it would be relieved of any charge from the time the material is ordered until the date on which it was shipped, and for the days the car was held for repairs would only pay $1 a day. It seems unjust that the Birmingham Southern should be penalized two ways on account of damage to equipment. Also to avoid prohibitive expense the Birmingham Southern rules make it necessary for the Birmingham Southern Railroad to return to its connections all cars as soon as they are empty unless loading is immediately available by the consignee at the plant where the car is delivered. This involves considerable extra switching and engine service. As showing the operation of this rule, I have had 4 statements, marked A, B, C and D, prepared (Tr. 3964).

(Document marked "A" received in evidence as Exhibit No. 416; document marked "B" received in evidence as Exhibit No. 417; document marked "C" received in evidence as Exhibit No. 418; and document marked "D" received in evidence as Exhibit No. 419.) (Tr. 3965.)

Exhibit 416 shows the empty cars received from and delivered to all connecting lines at Birmingham from November 1 to November 15, 1927. Exhibits 417 and 418 give the same information on cars interchanged at Ensley and Bessemer in the same period. Exhibit 419 is a recapitulation of the three previous exhibits and shows that at all junctions 1,829 cars were delivered empty to connections, and that in the same period 1,886 cars were received empty. Of the 1,829 cars, 1,967 were of the same classes that had to be subsequently re-ordered to take care of outbound loading. The effect of the Birmingham Southern Rule is to cross-[fol. 788] haul empties in the same class. I have another statement showing 150 identical cars that had been delivered empty to connections and were again received empty from connections to fill orders for outbound loading within 48 hours after delivery (Tr. 3966).

(Said document received in evidence as Exhibit No. 420.)

It seems obvious that money and effort would be saved to the Birmingham Southern and its connections if a fairer basis to settle for car hire could be adopted. It is my judgment that if the Birmingham Southern rule is abrogated, as we think it should be, and our line should be put on the per diem basis, it would not be fair or correct to add to our inter-road switching charge of $2.70 a car an amount equal to 3 days per diem or $3 a car. By "inter-road switching charge" I mean taking a loaded car or empty and placing it for load and bringing it back to the trunk line (Tr. 3967). That would be termed "terminal switching". Adding $3, an amount equal to 3 days per diem, to our switching charge of $2.70 a car would not be fair or correct. In 1927, we estimate that we switched not less than 15,000 cars on which the switching charges were not absorbed by connecting lines. Our present terminal switching charge is $2.70 a car (Tr. 3968). I do not think it would be proper to add anything to that charge to offset the per diem, as it would place the car hire burden on cars where the trunk lines do not absorb on the consignee. The $2.70 charge is our charge and we do not think it should be increased to throw the burden on the shipper when the carriers do not absorb it. Absorption is made on approximately 60% of the traffic handled. In 40% of the instances the addition of per diem to the switching charge would increase charges to the people who pay charges and would be an increase in the through rate (Tr. 3969). The charge is a switching charge [fol. 789] on traffic on which some trunk line receives a line haul. Our switching charges are only absorbed on competitive line haul traffic of the trunk line. As freight rates include the cost of furnishing a car, it is improper that the car hire should be added to the switching rate that a consignee has to pay, and we are unwilling to have our patrons treated any differently in this respect than shippers located upon other railroads. The record shows the number of industries on the Birmingham Southern Railway (Tr. 3970). It was said on our behalf at the Atlanta hearing that we were willing to be let alone so far as per diem was concerned, although it was also said that our line was a full-fledged common carrier and will live under the same rules as other carriers. We think there are injustices to us in the Birmingham Southern rule and we feel that as we are a

common carrier we ought to have the same treatment in every respect. This involves our becoming a subscriber to the per diem rules agreement, being allowed a reclaim in accordance with the rules and given a sufficient allowance out of the through rate on line haul traffic to pay our expenses (Tr. 3971), on the principles laid down by the Commission in its decision in Docket I. & S. 61, including an amount necessary to meet the per diem expense. Such a disposition of the question, so far as we are concerned, would produce a more satisfactory and flexible car supply; economy to us and to our connecting lines in switching expense and a conservation of car supply through a reduction in the days cars are out of service (Tr. 3972). The number of cars shown on our Exhibit 325 are loads. Some cars covered two movements and are included as two cars. The days shown are per diem days, including Sundays and holidays. That applies to the days mentioned in the transcript as being contained in Exhibit 325 (Tr. 3973).

Cross-examination:

Our road, under the per diem rules of the Association, would receive a reclaim under the $2.70 switching charge [fol. 790] to which I refer. Our other traffic is on divisions or allowances. We would receive our reclaim on the non-competitive traffic handled on a switching charge. The trunk lines could not absorb an addition to that charge unless they publish it as an initial proposition (Tr. 3974). Adding an allowance for per diem to switching charges which are not absorbed would be equivalent to the trunk line putting in their tariff that they would absorb their own charge. It does not appeal to me as a practical solution. I doubt if keeping our records necessary to make reclaim would be much more than keeping the records we have to keep under the Birmingham Southern rule.

STEPHEN D. RICE, having been previously called as a witness, was recalled and testified:

I have been sworn previously in this case (Tr. 3975). I am Traffic Manager of the Glenfield & Western Railroad and have been connected with the property since Septem-

ber, 1927. We have 3 coal burning locomotives, 1 combination car, 1 Russel plow and 60 flat cars used for hauling logs and wood. Our gauge is standard and we use 60 pound rail. I have a map of the railroad.

(Said document received in evidence as Exhibit No. 421.)

Our road connects with the New York Central at Glenfield, New York (Tr. 3976). I do not know how many cars we handle per year. The road is owned by industries. It was incorporated in 1903 and the capital stock is owned jointly by the Gould Paper Company and the Dexter Sulphite Company, manufacturers of pulp paper. The road taps 60,000 acres of virgin timber. Lately the Keystone Wood, Chemical & Lumber Company has purchased the equity owned by the Dexter Sulphite Company, including a one-half interest in the 60,000 acres of timberland tapped by the present road which extends 19.55 miles from Glenfield, New York to Monteola, New York, where an industrial road 9 miles in length extends into the woods (Tr. 3977). The industrial road is also owned jointly by the present owners of our road, but is operated by the Key-[fol. 791] stone Company as a logging road. There are no other industries. 98% of the traffic will be logs, chemical wood and pulpwood from Monteola to Glenfield. The Keystone Company has erected a chemical plant and saw mill at Glenfield, with a capacity of more than 27 cars of logs a day and the chemical plant will use 250 cords of wood. Wood charcoal and acids will be produced and a large quantity of coal will be necessary. The Keystone Company has also purchased 40,000 acres of timber 9 miles northeast of Glenfield and will start immediately to build a railroad to be ready for use this fall which will assure continued operation of the Glenfield & Western the year around (Tr. 3978). On account of snow, cuts and grades, operation has been discontinued several months in each year. The road incorporated as a common carrier to obtain right of way. Over 1,500 feet of right of way is rock cut and fill. The line was bought from the Rome & Sacketts Harbor Railroad and the total mileage is 19.55 miles which crosses a rough country. There are more than 100 curves, many of which are sharp and less than 50% of the track is straight. There is a rise of 1,145 feet in 9 miles, the steepest grade

being 277 feet per mile. The road crosses 30 bridges, 13 cattle passes, 48 culverts and has 14 retaining walls. 6 miles passes through first-class farming country. The road is in fairly good condition and is inspected annually by the New York Public Service Commission (Tr. 3979). We are classed as a common carrier by the State of New York. We hold ourselves out and serve the public. The road is owned and operated primarily to serve the Keystone and Gould Company, owning equal interest in the timber and the railroad. It handles no traffic for any other shippers than the proprietary interests which pay the published tariff rates. It has not been valued by the Interstate Commerce Commission. After an exchange of letters we got a letter from Director Prouty of the Commission relative to [fol. 792] our status (Tr. 3980).

(Said document received in evidence as Exhibit No. 422.)

We were not then considered an interstate carrier. Our investment is $277,066 and the estimated cost of reproduction is $780,094.85. We do not participate in through rates. We turn cars over to the New York Central but so far as I know none go in interstate movement. We have not been in operation long enough to ship any stuff out of the State. The old company shipped to two mills in the state (Tr. 3981). The proprietary industries are located within the State and use pulpwood off the road. We have not yet handled any traffic coming from points out of the state, although there will be some handled about the middle of April. Our accounts are incomplete and we do not keep them and report to the Interstate Commerce Commission according to regulation. We have no through rates and divisions. All rates are published on a proportion basis with a percentage less for shipments in carload quantities than for local New York Central-Glenfield delivery (Tr. 3982). The reductions under the proportions vary according to distance or destination. The road makes no money. Our passenger revenue has varied from $291.60 in 1926 to $1,501.62 in 1925. Our freight revenue in 1925 was $40,960.45; in 1926, $31,130.97; and in 1927, $12,024.46. The road was closed during some months of each year. In addition to paying lawful rates, the proprietary interests are paying the deficits in operation of the road and losing interest on the

money invested. There has been a deficit each year in the past (Tr. 3983). We are now arranging with the New York Central for filing proportional tariffs on lumber, charcoal, acetic acid and menthanol, moving all over the country, and as soon as the factory starts the shipments will go all over the country (Tr. 3984). If it is then advisable we will draw the attention of the Bureau of Valuation to this road (Tr. 3985). The industries on our road have free time to load or unload, but are at a disadvantage because all the material [fol. 793] handled by the railroad belongs to the industries. Our industries have the same free time as an industry on the New York Central (Tr. 3986). We do not subscribe to the A. R. A. Code of Per Diem Rules. When we took control, we found the road was being charged regular per diem at $1 per day and there is an unpaid balance for 1927 of $4760. Using the time basis for charging car hire is unfair to us because the time we have a car in our possession is out of proportion to the length of our haul or the revenue we own. We take in most cars empty and get only a one way haul. The shippers must have time in which to load. When we deliver a loaded car to the New York Central (Tr. 3988) they get a haul of 50 to 250 miles with no delays by shippers. We would be willing to pay for railroad owned cars on a mileage basis, but our use for foreign cars is mostly at Glenfield, so we receive no road haul. I am willing to pay in per diem the same as I would have to pay at a mileage rate, but since we load most cars at Glenfield and receive no road haul but only a switching movement, the basis laid down for industrial roads in Appendix C of Circular CS-59 of the Railroad Administration would be the fairest and best plan. We could then accord our shippers the same 2 days of free time that the New York Central gives shippers, and it would give us a day to haul the empty in and haul the load out and deliver it to the New York Central. I understand what Appendix C of Circular CS-59 is (Tr. 3989). Shippers on the New York Central have the practical benefit of that rule, as they have the per diem rule of 48 hours' free time. I understand that Appendix C to Circular CS-59 gives them 48 hours' free time and also time to place the cars and get them back to the connection. I think there is an average agreement under that Appendix. Many shippers on the New York Central have the average agreement, but not all of them (Tr. 3990). I worked for the New York

Central for 13 years and was yardmaster at Ogdensburg [fol. 794] for a year. On the haul, I think it takes a little less time for us to place and remove cars at industries than it would take the New York Central. The difference between the New York Central rates from Glenfield and the proportional rates from Glenfield on cars from our line, is from ½¢ to 3¢ a hundred, or from $2 to $12 a car (Tr. 3991). We apply the Standard Demurrage Rules but our book records do not show any collection of demurrage. We endeavor to get relief from the New York Central and have a letter dated February 14, 1928.

(Said document received in evidence as Exhibit No. 423.)

I am familiar with the so-called "Birmingham Southern Rule" and I understand it to be substantially like Appendix C of CS-59 and based upon the ownership of a carrier by an industry. In view of the ownership of our road by an industry, we are entitled to the Birmingham Southern Rule or a similar plan (Tr. 3992).

Cross-examination:

If we had the CS-59 basis or the Birmingham Southern basis we would have an advantage with respect to car hire that we do not now have. We are now paying $1 a day and it would substantially reduce that amount and constitute an advantage we do not now have. I think we are entitled to that because the road is owned by shippers, but I think that any short line ought to have the advantage whether owned by shippers or not (Tr. 3993). I have no definition of short line in mind. There are a number of different kinds of short lines, and as a general proposition they furnish a car to a connecting line getting very little revenue, and the connecting line gets almost all the revenue. We get only $5 for switching a car from a private siding to the interchange. I don't know that I would make shortage of revenue the deciding factor. A short line is generally owned by one or two industries, but it might be a short line if it were not so owned (Tr. 3994). The builder who turned the road over estimated that it would cost over $780,000 to build the [fol. 795] railroad new. They were the people who were selling the road and they owned it formerly. They built it in 1901 to 1903, and it was from them we got the statement

that it would cost $780,000 to build it new. When our road performs part of the service at Glenfield or beyond, the New York Central reduces its rate by publishing proportional rates lower than the Glenfield rate proper (Tr. 3995). If the New York Central made delivery at Glenfield, it would get more revenue than it gets if the car were turned over to us, the reduction varying from $2 to $12 a car. That amount goes to us when we participate in the transportation. Our road was closed during some months on account of severe weather. The severe weather did not extend to June 1, but the paper mills that owned it did not require any pulpwood brought out during that time. The bad weather did not extend to June 1, but they were just getting ready then to operate (Tr. 3996). The fact is that the road did not operate because the proprietary industries were not ready to operate. The road now has a deficit but could largely overcome it if it raised its rate. The rates were so high that I had to reduce them in order to move the traffic. We were asked to reduce them by the industries that owned the road. The rates were way out of line compared with the New York Central rates. The railroad could increase its revenue if it increased its rates, but we have made no application to the New York Commission to do that. I don't know why the road did not collect demurrage during the period that I examined the books (Tr. 3997). The books do not show that any accrued. If any did accrue, it accrued against the proprietary industries and the books only show that none was paid. When I said that the New York Central got a straight haul of from 50 to 250 miles, I meant that they haul it that far and that the shipper is not really interested in the haul. We never get any haul as there is no traffic except that originating at Glenfield. At that point the traffic is switched by us to the New York Cen-
[fol. 796] tral (Tr. 3998) and the inbound traffic is also switched. I am somewhat familiar with the A. R. A. per diem rules, and I think that if we subscribed to the rules we would get a reclaim on that terminal switching traffic. We had not thought of doing that to avoid the expense. I believe the rule provides that if we were a subscriber and our interchange traffic is switch traffic at Glenfield, the rules would give us reclaim on all the car hire we pay. I don't think we should pay $1 a day per car, and it might be a good

idea to look into it (Tr. 3999). When we acquired the property we bought a half interest in the road through stock purchase. Our investment in road and equipment means the entire tracks and all of the cars. To reproduce it would take about three times as much as our present investment on account of the difficult road, the cuts and fills. Our present investment of $277,000 is the book record of the present investment in road and equipment (Tr. 4000). The owner's statement was that it would cost $780,000, plus, to reproduce the road. We paid $257,066 for a half interest. I don't know just what the grade is on the mile of road which rises 277 feet in a mile. The cars come down pretty stiff on that grade sometimes. We have regular steam engines and if we have a long train out we have some Shay drivers like a log engine. We are planning on handling 20 cars a train (Tr. 4001). We will do that with one locomotive down as nothing goes up except empties. The locomotive is a Mogul type. We will probably have to do some dragging on the cars. I know nothing more about the grades than what I said. I copied it from the engineer's report. We only have one tariff which is a local class rate tariff. It includes the switching tariff of $5 for handling cars from our interchange to the interchange with the New York Central (Tr. 4002). It is published as a switching rate. It would make no difference to us whether we got reclaim on the Birmingham Southern basis or as a subscriber to the per diem rules. [fol. 797] I imagine that our grade would have curvature, as there are 100 curves in that road in 19 miles (Tr. 4003).

OFFERS IN EVIDENCE

Mr. Hitt: During the preceding hearings a number of witnesses representing short lines were requested to furnish considerable information, which they at that moment were unable to supply. Most of it is now in hand and ready to be presented at this time in the form of exhibits so that they may be assigned appropriate exhibit numbers. Copies have been submitted to counsel for the American Railway Association and he has accepted them as being responsive

to the record in all but a few instances. I will present the exhibits in the order in which the witnesses who had furnished them have appeared, and will refer to the page numbers of the transcript where the information was called for (Tr. 4004).

I present an exhibit of the Narragansett Pier Railroad, which witness Monahan was required to furnish at page 1518 of the transcript, showing freight revenue for the years 1921 to 1925, inclusive, net railway operating income for the years 1921 to 1926, inclusive, and demurrage collections for the years 1921 to 1926, inclusive (Tr. 4005).

(Said document received in evidence as Exhibit No. 424.)

I present an exhibit of the Unadilla Valley Railway, which witness Brome was requested to furnish at pages 1584, 1585, 1593 and 1599 of the record, showing operating revenue, net railway operating income, gross freight revenue, per diem payments and demurrage collections for the years 1922 to 1926, inclusive, copies of final valuation made by the Commission in Valuation Docket 812 and two underlying statements in connection with Exhibit 118 (Tr. 4006).

(Said document received in evidence as Exhibit No. 425.)

Examiner Rice: We asked him to give his valuation and book investment, but I do not see the valuation here. Will [fol. 798] you authorize us to take the book investment off the annual report? (Tr. 4008.)

Mr. Hitt: That will be all right and also his valuation under Section 19a.

Mr. Towner: That is agreeable to us.

Mr. Hitt: I present an exhibit of the White River Railroad, which witness Putnam was requested to furnish at page 1552 of the record, showing number of loads interchanged in 1925 and 1926 and number of days detention on the line, the demurrage collected in the years 1922 to 1926, inclusive, and net railway operating income for the years 1922 to 1926, inclusive. The word "accruals" on the first sheet means number of days detention (Tr. 4009).

(Said document received in evidence as Exhibit No. 426.)

I present a statement for the Springfield Terminal Railway which witness Putnam was requested to furnish at page

1563 of the record, showing gross operating revenue, freight revenue, net railway operating income and demurrage collections for the years 1923 to 1926, inclusive.

(Said document received in evidence as Exhibit No. 427) (Tr. 4010).

I present an exhibit from the Grasse River Railroad, which witness Sykes was requested to furnish at page 1447 of the record, showing total paid for car hire under present arrangements in 1925, number of foreign cars handled in 1925, total detention on those cars, demurrage collected in 1924, 1925 and 1926, and operating revenue, freight revenue, net railway operating income and demurrage collections for the years 1924, 1925 and 1926.

(Said document received in evidence as Exhibit No. 428.)

I present an exhibit of the Bloomburg & Sullivan Railroad, which witness Ritter was requested to furnish at pages 1738 and 1740 of the record, showing freight revenue for 1923, 1924 and 1925, and copies of tariffs showing participation in joint through rates on all traffic (Tr. 4011).

[fol. 799] (Said document received in evidence as Exhibit No. 429.).

I present an exhibit of the Lake Erie & Fort Wayne Railroad, which witness Langford was requested to furnish at pages 1708 and 1709 of the record, being copies of letters exchanged with the New York Central and Nickel Plate between February 8 and February 14, 1927.

(Said document received in evidence as Exhibit No. 430.)

I present an exhibit of the Dents Run Railroad, which witness Hough was requested to furnish at page 1760 of the record, showing valuation of the road as found by the Commission in Valuation Docket 574 (110 I. C. C. 239), with additions, betterments and retirements since valuation date (Tr. 4012).

(Said document received in evidence as Exhibit No. 431.)

I present an exhibit of the Colorado & Southeastern Railway, which witness Johnson was requested to furnish, showing total per diem detention on 7,534 cars handled in 1926, as shown in Exhibit 138, and the basis upon which it was

computed, requested at page 1859 of the record; a statement explaining the $8 demurrage charge collected in 1925, requested at page 1864 of the record; a statement showing the number of cars interchanged in 1926 with the Santa Fe, Colorado & Southern and the D. & R. G. with detention thereon, requested at page 1867 of the record; a statement showing the number of empty and loaded cars interchanged with the Santa Fe in 1926, requested at page 1868 of the record (Tr. 4013); and a statement of the basis of settlement between the Santa Fe, Denver & Rio Grande and Colorado & Southeastern for 10 years, requested at page 1870 of the record.

(Said document received in evidence as Exhibit No. 432.)

I present an exhibit of the Ozark Southern Railway, which witness Mitchell was requested to furnish at pages 1960 and [fol. 800] 1977 of the record, containing copies of the local tariff and a statement of book investment in road and equipment.

(Said document received in evidence as Exhibit No. 433.)

I present an exhibit of the Fairchild & North Eastern Railway, which witness Sherwood was requested to furnish at pages 1994 and 1995 of the record, showing (Tr. 4014) gross operating revenue, gross freight revenue and net railway operating income for 1925 and 1926, book value on investment in road and equipment as of December 31, 1926, and value placed on the road by the Commission.

(Said document received in evidence as Exhibit No. 434.)

I present an exhibit of the Arkansas Railroad, which witness Fish was requested to furnish, showing demurrage collections in 1924, 1925 and 1926, requested at page 2100 of the record, book value of investment in road and equipment requested at page 2103 of the record, and valuation placed upon the railroad by the Commission (Tr. 4015).

(Said document received in evidence as Exhibit No. 435.)

I present an exhibit of the Pittsburgh County Railway which witness Goodner was requested to furnish at pages 2119 to 2130 of the record, showing financial reports for 1924 and 1925, demurrage accruals in 1925 and 1926, number of cars of coal interchanged outbound, and detention

thereon on the Pittsburgh County Railway and number of carloads of other traffic interchanged and detention on those cars, and a statement showing number of foreign cars on the rails of the Pittsburgh County Railway in 1925 (Tr. 4016).

(Said document received in evidence as Exhibit No. 436.)

I offer in evidence a copy of answer to the questionnaire by the Pittsburgh County Railway (Tr. 4017).

(Said document received in evidence as Exhibit No. 437.)

I present an exhibit of the Wichita Northwestern Railway which witness Fry was asked to furnish at page 2251 [fol. 801] of the record, showing number of per diem cars interchanged, detention thereon and segregation as between per diem detention and non per diem cars in 1925 and 1926, and copies of correspondence between officials of the Santa Fe & Wichita Northwestern, making the present storage arrangement.

(Said document received in evidence as Exhibit No. 438.) (Tr. 4018.)

I present an exhibit from the Northeast Oklahoma Railroad Company which witness Darrow was requested to furnish at pages 2168 to 2178 of the record, showing additions and betterments from June 30, 1918, to December 31, 1926, with separate totals for 1918 to 1925, inclusive, and for the full term of 1918 to 1926; and a financial statement similar to the one on the last page of Exhibit 189 showing gross freight operating revenue for the years 1920 to 1926, inclusive.

(Said document received in evidence as Exhibit No. 439.)

Witness Small of the Southern Michigan Railway was requested at page 2220 of the record to furnish a statement of loads interchanged in 1925 and 1926, together with the car days in each year (Tr. 4019). I would like to have the privilege of furnishing this within 10 days after the hearing closes.

Mr. Towner: No objection.

Director Bartel: That may be done.

Mr. Hitt: I present an exhibit of the Galesburg & Great Eastern Railroad, which witness Seward was requested

to furnish at page 2278 of the record, showing gross freight revenue and net railway operating income for 1925 and 1926.

(Said document received in evidence as Exhibit No. 440.) (Tr. 4020.)

I present an exhibit of the Hooppole, Yorktown & Tampico Railroad, which witness Seward was requested to furnish at page 2287 of the record, showing number of cars interchanged with the Burlington in 1926, the per diem days detention on those cars, demurrage collected by the Hooppole Company in 1926, car hire paid to the Burlington in 1926, and income account for 1926 (Tr. 4021).

(Said document received in evidence as Exhibit No. 441.)

[fol. 802] I present an exhibit of the Hanover Railway, which witness Seward was requested to furnish at pages 2292 and 2293 of the record, showing number of shares of capital stock of the railroad held by the Hanover Woolen Manufacturing Company and by individuals owning stock in that company, the amount of car hire paid in 1926, the number of per diem cars on the Hanover Railway in 1926, the total per diem days detention on those cars, and a financial and operating statement of the Hanover Railway in 1926.

(Said document received in evidence as Exhibit No. 442.) (Tr. 4022.)

I present an exhibit of the Fox & Illinois Union Railway, which witness Seward was requested to furnish at pages 2328 to 2332 of the record, showing number of cars interchanged in 1926 with the Rock Island and Burlington with the detention on those cars, and the amount paid in car hire; also a statement of operating results of the Fox & Illinois Union Railway in 1926.

(Said document received in evidence as Exhibit No. 443.)

I present an exhibit of the Benton Harbor & St. Joe Railway which witness Seward was requested to furnish, at page 2331 of the record (Tr. 4023) containing copies of demurrage tariffs of the carrier; and a statement of operating results in 1926.

(Said document received in evidence as Exhibit No. 444.)

I present an exhibit of the Southern Illinois Railway & Power Company, which witness Seward was requested to furnish at page 2337 of the record, showing operating results for 1926 (Tr. 4024).

(Said document received in evidence as Exhibit No. 445.)

I present an exhibit of the Salt Lake & Utah Railroad, which witness Osborn was requested to furnish at page 2411 of the record, showing total foreign cars on that line and per diem days thereon, the number of foreign cars [fol. 803] handled in terminal switching service, covered by a reclaim, and the per diem days thereon, the foreign cars handled in local traffic in 1926 and per diem days thereon, and the number of cars handled in line haul traffic originated and delivered on the rails of the Salt Lake & Utah (Tr. 4025).

(Said document received in evidence as Exhibit No. 446.)

I present an exhibit of the Tacoma Railway & Power Company which witness Somers was requested to furnish at pages 2453 and 2486 of the record, showing who collects demurrage on cars delivered to the State Asylum, and containing a copy of this carrier's tariff on coal and feed.

(Said document received in evidence as Exhibit No. 447.) (Tr. 4026.)

I present an exhibit of the Pacific Northwest Traction Company, which witness Somers was requested to furnish at pages 2482 to 2515 of the record, correcting a discrepancy between the Railway Equipment Register and the witness' statement as to the number of cars owned by this carrier, showing per diem on cars handled in switching service, book investment in road and equipment in 1923 and 1924, and number of cars held in 1926 for prospective loading for the Great Northern, Northern Pacific and St. Paul.

(Said document received in evidence as Exhibit No. 448.) (Tr. 4027.)

I present an exhibit of the Washington Western Railway, which witness Kinker was requested to furnish at pages 2551 and 2553 of the record, showing total number of cars

interchanged in 1926, detention thereon, and days held for prospective loading; also demurrage collected in 1926 under the 4 day free arrangement.

(Said document received in evidence as Exhibit No. 449.)

I present an exhibit of the Valley & Siletz Railroad, which witness Huggins was requested to furnish at pages 2603 to 2608 of the record, showing whether or not the per diem days in question 11 of the questionnaire included Sundays and holidays, how much of the demurrage collected in 1926 [fol. 804] accrued on foreign cars (Tr. 4028), and gross operating revenues, net railway operating income, book investment and per cent of net railway operating income to book investment in 1926.

(Said document received in evidence as Exhibit No. 450.)

The President of the Great Southern Railway appeared at the Portland hearing, but was not prepared with figures. Since then he has executed the questionnaire, and Mr. Towner stated that he has no objection to putting it in evidence at this time (Tr. 4029).

(Said document received in evidence as Exhibit No. 451.)

I present an exhibit for the Magma Arizona Railroad, which witness Minson was requested to furnish at pages 2700 and 2702 of the record, showing number of loads interchanged in 1926 and investment in road and equipment.

(Said document received in evidence as Exhibit No. 452.) (Tr. 4030.)

I present an exhibit of the Trona Railway, which witness Wilt was requested to furnish at page 2727 of the record, showing net railway operating income in the first 7 months of 1927.

(Said document received in evidence as Exhibit No. 453.)

I present an exhibit of the California Western Railroad & Navigation Company, which witness Nelson was requested to furnish at page 2781 of the record, showing gross operating revenues, operating expenses including car hire and taxes, and net railway operating income in 1924 and 1925.

(Said document received in evidence as Exhibit No. 454.) (Tr. 4031.)

I present an exhibit of the San Francisco Napa & Calistoga Railway, which witness Hoffman was requested to furnish at page 2834 of the record, showing operating expenses in 1925.

(Said document received in evidence as Exhibit No. 455.)

Witness McCullough of the Trinity Valley Southern Railway was asked at pages 2888 and 2917 to furnish statements [fol. 805] showing loads and partial loads interchanged inbound and outbound in 1926 and detention in that year (Tr. 4032) and the basis of car hire settlement involved during Federal control.

I have received a statement showing loaded and empty foreign cars received and delivered to the I. G. N. during 1926 but not showing aggregate detention. I asked the privilege of submitting a corrected statement in 10 days.

Director Bartel: That may be done.

(Said document received in evidence as Exhibit No. 456.)

(Tr. 4033.)

Mr. Hitt: Mr. McCullough was also requested to furnish for the Moscow, Camden & San Augustine Railroad, at pages 2916 and 2917 of the record a statement as to when the interchange time with the Southern Pacific went into effect, the basis of car hire settlement in effect during Federal control, and the loads and partial loads interchanged in 1926 and detention thereon. I asked the privilege of submitting that within 10 days.

I present an exhibit from the Jefferson & Northwestern Railway which witness Clark was requested to furnish at page 2971 of the record, showing loads handled in switching service in 1926 (Tr. 4034) and the days those cars were on line.

(Said document received in evidence as Exhibit No. 457.)

I present an exhibit of the Marshall, Elysian Fields & Southeastern Railway which witness Gaines was requested to furnish at page 3042 of the record, containing the financial statement for 1926 and a statement of investment in road and equipment in 1926.

(Said document received in evidence as Exhibit No. 458.)

I submit an exhibit of the Beaver, Meade & Englewood Railway which witness Turpin was requested to furnish at pages 3062 and 3068 of the record (Tr. 4035) showing out-[fol. 806] bound and inbound traffic, total number of foreign cars on line in 1925 and detention thereon, total number of foreign cars on line in 1926 and detention thereon and net railway operating income for 1926.

(Said document received in evidence as Exhibit No. 459.)

I present an exhibit of the Mansfield Railway & Transportation Company which witness Seward was requested to furnish at pages 3120 and 3122 of the record, showing divisions fixed by the Commission in the Tap Line Case of 1922 (Tr. 4036) and a correction of figures in Exhibit 288 and 289 relating to per diem cars.

(Said document received in evidence as Exhibit No. 460.)

I present an exhibit of the Warren & Ouachita Valley Railroad which witness Wheeless was requested to furnish at pages 3129 and 3132 of the record, showing revenue expenses and per diem payments in 1926 and carloads of local traffic handled in 1925 with detention thereon.

(Said document received in evidence as Exhibit No. 461.) (Tr. 4037.)

I present an exhibit of the Gulf & Sabine River Railroad which witness Peabody was requested to furnish at pages 3145 and 3146 of the record, showing number of foreign cars on line in 1926, detention thereon, and number of loads interchanged in that year.

(Said document received in evidence as Exhibit No. 462.)

I present an exhibit of the Fernwood, Columbia & Gulf Railroad, which witness Cobb was requested to furnish at page 3165 of the record, containing a statement of loads interchanged in the 8218 cars shown in Exhibit 303 and the revenue thereon; a statement of the book value of investment in road and equipment at the close of 1926 (Tr. 4038) and a corrected copy of Exhibit 304.

(Said document received in evidence as Exhibit No. 463.)

I present an exhibit of the Natchez, Columbia & Mobile Railroad which witness Frasier was requested to furnish

at pages 3203 and 3209 of the record which corrects an [fol. 807] error in question 20 of the questionnaire with respect to car hire received in the years 1922 to 1925, inclusive, and shows the foreign line cars on the Natchez, Columbia & Mobile in 1926 loaded and empty, with per diem detention thereon.

(Said document received in evidence as Exhibit No. 464.) (Tr. 4039.)

I present an exhibit of the New Orleans, Natalbany & Natchez Railway which witness Miller was requested to furnish at pages 3227 and 3255 of the record, showing the answer to question 12 of the questionnaire and the reclaim arrangement and manner of ascertaining per diem. I would also like to file a statement amplifying the witness statement at about page 3253 of the record, with respect to questions 10 and 16a in Exhibit 313. There is no objection.

(Said document received in evidence as Exhibit No. 465.) (Tr. 4040.)

I present an exhibit of the Gainesville & Northwestern Railroad which witness Sanders was requested to furnish at page 3242 of the record, containing an explanation of the demurrage charged against the proprietary industry in 1925.

(Said document received in evidence as Exhibit No. 466.)

I present an exhibit of the Lawndale Railway & Industrial Company which witness Schenck was requested to furnish at page 3362 of the record, being a statement of per diem bills rendered by the Seaboard Air Line Railway since 1922 (Tr. 4041).

(Said document received in evidence as Exhibit No. 467.)

I present an exhibit of the Ware Shoals Railroad Company which witness Gordon was requested to furnish at page 3424 of the record, showing loads and partial loads interchanged with connections in 1926, number of days its cars were on line, and number of carloads handled for owning industry; and also containing copy of agreement with the Southern Railway for the use of locomotive cars, etc.

(Said document received in evidence as Exhibit No. 468.)

[fol. 808] I present an exhibit of the Due West Railway Company which witness Galloway was requested to furnish at page 3450 of the record, showing number of cars interchanged with the Southern in 1926 and number of days detention thereon (Tr. 4042).

(Said document received in evidence as Exhibit No. 469.)

I present an exhibit of the Appalachian Railway which witness Sisk was requested to furnish at pages 3458 and 3461 of the record, showing number of carloads interchanged in 1926 and detention of foreign equipment in 1926, number of carloads handled for the proprietary industry in 1926, demurrage collections and car hire collections in 1926 and operating revenues and expenses including taxes and book investment in 1925 and 1926 (Tr. 4043).

I also have copies of correspondence between the Appalachian and the Southern when the present basis of car hire settlement was put into effect, consisting of 7 letters.

(Said document received in evidence as Exhibit No. 470.)

I present an exhibit of the Nelson & Albemarle Railway which witness Stark was requested to furnish at page 3525 of the record, being copies of correspondence with the officials of the Chesapeake & Ohio and Southern on the subject of the present interchange arrangement (Tr. 4044).

(Said document received in evidence as Exhibit No. 471.)

I present an exhibit of the High Point, Thomasville & Denton Railroad which witness Cannon was requested to furnish at page 3555 of the record, being the corrected answer to question 10 in Exhibit 338.

(Said document received in evidence as Exhibit No. 472.)

I present an exhibit of the Georgia Northern Railway which witness Johnson was requested to furnish at pages 3595, 3598, 3612, 3613 and 3614 of the record, being corrected answers to questions 7 and 8 in Exhibit 343 and [fol. 809] showing the switching reclaims (Tr. 4045) paid to the Georgia Northern on terminal switching cars and per diem paid by the Georgia Northern, car mileage on per diem cars, exclusive of private cars, in 1925 and 1926 and

operating revenues and expenses including taxes and net railway operating income and book value in 1926.

(Said document received in evidence as Exhibit No. 473.)

I present an exhibit of the Pickens Railroad Company which witness Taylor was given leave to furnish at page 3713 of the record, being amended answers to questions 7, 8 and 20 in Exhibit 376.

(Said document received in evidence as Exhibit No. 474.) (Tr. 4046.)

I present an exhibit of the Flint River & Northeastern Railroad which witness Johnson was requested to furnish at pages 3816 and 3817 of the record, showing freight revenue and demurrage collections in 1922, 1923 and 1924, operating revenue, operating expenses including taxes, net railway operating income and book investment in 1925 and 1926, demurrage collected in 1926 and number of loads interchanged in 1926.

(Said document received in evidence as Exhibit No. 475.) (Tr. 4047.)

I present an exhibit of the Gainesville Midland Railway which witness Crockett was given leave to furnish at page 3858 of the record, being answers to questions 7, 7b, 8 and 9 of the questionnaire and showing number of cars interchanged in 1925 and the detention thereon.

(Said document received in evidence as Exhibit No. 476.)

I present an exhibit of the Georgia, Ashburn, Sylvester & Camilla Railway which witness Johnson was requested to furnish at pages 3910 and 3911 of the record, showing operating revenue, net railway operating income and book investment in 1926, and mileage made by per diem cars in the same year (Tr. 4048).

(Said document received in evidence as Exhibit No. 477.)

[fol. 810] I request permission to file within 10 days after the hearing closes a statement for the East Carolina Railroad containing copies of contract for switching service with the Atlantic Coast Line, a statement of the number of loads handled in per diem cars in 1926 and the number of

inbound per diem cars handled in 1926, and the mileage made by them.

Director Bartel: That may be done. We will mark the California Central Railroad Company Exhibit No. 478. It is already in the docket (Tr. 4049).

(Said document was thereupon given the number 478 and is in the docket.)

Director Bartel: The statements marked Cement, Tolenas & Tidewater Company will be given the number 479.

(Said document is thereupon given the number 479 and is in the docket.)

Director Bartel: The Long View, Portland & Northern will be received at this time as Exhibit No. 480.

(Said document received in evidence as Exhibit No. 480.)

A. R. YARBOROUGH was called as a witness and, being duly sworn, testified as follows:

I am Traffic Manager of the Campbell's Creek Railroad, Middle Creek Railroad, Winifrede Railroad, Stroud's Creek & Muddlety Railroad and Santa Fe Northwestern Railway (Tr. 4050). In this case I represent all of them except the Campbell's Creek Railroad. The Santa Fe & Northwestern is a common carrier under the laws of New Mexico and files tariffs and reports with the Corporation Commission of that State and with this Commission. Its line extends from Bernalillo, New Mexico, where it connects with the Santa Fe, to Porter, New Mexico, a distance of 52½ miles. The road was constructed primarily to haul logs to the mill of the White Pine Lumber Company and cost approximately $1,250,000 to construct. It traverses [fol. 811] thinly settled country, passing through 5 Indian reservations (Tr. 4051). After 42 miles had been constructed an application for a certificate was filed with the Interstate Commerce Commission which was granted in Finance Docket 4727. It was then found necessary to lease 6.32 miles from Deer Creek to Porter from the Lumber Company, permission being granted in Finance Docket 5187. The line has through rates on copper matte, copper

ore, coal, coke and livestock. There is little or no movement except on livestock which is seasonable. The main commodity is logs on a rate of 3½¢, one of the highest rates for a 52 mile haul in the country. The road has always operated at a loss. The deficit in 1926 was $64,635.03 and in 1927 it was $65,104.79. I desire to file this statement as an exhibit (Tr. 4052).

(Said document received in evidence as Exhibit No. 481.)

The mill of the Lumber Company is about nine-tenths of a mile from the connection with the Santa Fe. Our switching charge is $8 of which the Santa Fe absorbs $3. The Lumber Company pays us the remaining $5. Our actual cost on an empty car over a period of 2 years is $7.10. The Santa Fe charges per diem on all cars interchanged. They allow us 2 days' reclaim on cars in switching service but the delay is 3½ days. The Lumber Company has an average agreement and pays little or no demurrage and our average detention to line haul cars, of which there are few, is 5 days. The Santa Fe Northern Railroad connects with our line at a point 25 miles from our connection with the Santa Fe. It has 3 lines on it (Tr. 4053) one being operated by the San Juan Coal Company. The Santa Fe Northern is in the hands of a receiver but the Coal Company, by agreement with the Receiver, operates the rails of the Santa Fe Northern as a plant facility. In order for the Coal Company to order cars they have to send a man 35 miles to our connection with the Santa Fe Northern, where [fol. 812] he 'phones us the number of cars he wants. We give that information to the Santa Fe which supplies us the cars. Those cars are supplied through our line. We take them to our connection with the Santa Fe Northern and turn them over to the locomotive of the Coal Company which brings the cars back and places them on our siding. At the present time the Santa Fe Northern is a plant facility (Tr. 4054). Our line is an intermediate line, but I understand from Mr. Lake that he expects us to pay per diem on those cars. He says he wrote us a letter but I have not received it. At the present time the Coal Company is an industry on our line and the Santa Fe is our only trunk line connection. Our divisions on such traffic as we have through rates on are very thin. Coal loading started last Saturday, a week ago, and we have only received two cars.

The average detention was one week. We would not charge demurrage on them as I contend that we have no jurisdiction over the cars after they are placed on the tracks of the Coal Company (Tr. 4055). I say this because the Commission has said in its decision in the Tioga Coal Company Case, 101 I. C. C. 611, that it is the duty of the trunk line to rate and supply cars to mines on the Stroud's Creek & Muddlety Railroad, and I contend the same rules should apply on the Santa Fe and Santa Fe Northwestern. We order the car simply as agent for the Coal Company, as they have no other way of doing it. We notify the agent, and after he puts the car in our interchange, it is on the tracks of the Coal Company within 3 hours. The Santa Fe has charged us with per diem on those cars while on the track of the Coal Company (Tr. 4056). Under the Act and under the decision of the Commission, I reached the conclusion that it is the duty of the trunk line to rate not only its own mines but those upon its dependent connections. The law says that the mines shall be treated the same for the purpose of rating the mines and furnishing the cars. I have in effect on the Santa Fe Northwestern the National Demurrage rules and do not charge demurrage under Sec- [fol. 813] tion D of Rule 1, except in a few cases. My view is that under the law the burden is on the Santa Fe to (Tr. 4057) rate the mines, and furnish the car, and that the burden of per diem while the mine holds the car is on the Santa Fe. That is my version under the demurrage rule, but I do not say it is the law. Prior to the building of our line, the total revenue at the Bernalillo station of the Santa Fe was about $60,000. Today it is over $250,000. Our divisions are very thin. The coal rates were forced in by order of the Corporation Commission of New Mexico. The rate from San Ildefonso to Albuquerque is $1.85 and the Santa Fe contends that it should have $1.35 for hauling the coal 17½ miles and performing only a delivery service. They want me to accept 50¢ a ton on lump and 40¢ a ton on pea and slack and haul the empty over a 2% grade, with the exception of about a mile and a half, and then haul the loaded car back over a grade of 1½% for 50¢. We haul the empty 25 miles and the load 25 miles (Tr. 4058). In addition to that Mr. Lake says I must pay per diem. We contend that we should not pay per diem and ask the Commission to so find. If we pay per diem and the mines hold the

cars for an average of a week, our division is not sufficiently large to take care of the per diem and yield us any return. Our average coal loading is about 45 tons and on lump coal our revenue would be $22.50. About a third of the coal is lump. On the other coal our revenue would be about $18 a car (Tr. 4059). The aggregate detention on our road and the connecting road would be about 8 days. The mines I am referring to are customarily dependent on the Santa Fe for cars. I think the law would require the Santa Fe to establish just and reasonable rules as betwen its own mines and those customarily dependent upon them. The competition is so great in our territory that our mines could not stand a demurrage charge if other mines did not pay it. We do not charge demurrage on coal cars for competitive reasons. We could not afford to do it and maintain our coal traffic. The White Pine Lumber Company holds a mortgage [fol. 814] on the Santa Fe Northwestern Railway and the stock is deposited as collateral. The Detroit Trust Company has a bond issue on the Coal Company and the Railroad Company for $1,250,000. I think the Lumber Company votes the stock of the Railroad, but do not know that that is the fact. About one-tenth of one per cent of our interline traffic moves on divisions of through rates (Tr. 4064). If you eliminate lumber, practically all of our traffic moves under local rates. We hande about 1800 cars of lumber a year and are allowed $3 for switching, which is probably the tap line allowance. The traffic officers admit that it is not sufficient, but that is all they can give me. The Commission fixed that allowance. About 95% of our traffic is for the owning industry. Only 2 cars have been shipped by the coal mine as yet. I think that 8 days detention on those cars is representative because a coal company that operates 35 miles of railroad (Tr. 4065) and has to haul the coal from cars in a truck could not get the car back to us in less than a week. That is a disability resulting from the location of the mine and the financial condition of the railroad they have leased. I am only asking the Santa Fe not to charge me per diem until this railroad, which is now operated by the Coal Company, operates and conducts its own business. I only want the Santa Fe to treat this mine identically as they treat mines they serve di-

rectly (Tr. 4066). I would not say that if the Santa Fe waives per diem it will help to equalize the disadvantage of location of this mine with other mines with which it competes. I say that the Santa Fe should treat a mine not on its rails the same as it treats one on its rails under the law and the demurrage rules. Our road started construction in 1922 and our tariffs became effective in January, 1926. We haul the lumber from the mills on our line about nine-tenths of a mile. We subscribe to the per diem agreement (Tr. 4067). We get 2 days reclaim on switching service with average detention of 3½ days. The mine is about [fol. 815] a mile from the loading point on the railroad at Lester which is about 35 miles from the railroad's connection with us. I think Mr. Lake can say why we got a reclaim without subscribing to the per diem agreement. I said we had to have 4 days and he gave me 2 days.

The Winifrede Railroad is incorporated under the laws of West Virginia and files tariffs and makes reports with the Corporation Commission of that State and this Commission (Tr. 4068). It connects with the Chesapeake & Ohio at Winifrede Junction, West Virginia, and extends south about 5 miles. It handles little or no traffic other than coal but operates mixed freight and passenger trains and carries the mail. The mines on this railroad own their own tracks and are rated for car distribution purposes and make reports to the Chesapeake & Ohio. The rules and regulations governing the rating of mines and distribution of cars to mines on the Chesapeake & Ohio are applied by it to our mines. Empty cars are ordered by the Coal Company from the Chesapeake & Ohio. The cars are placed on the interchange tracks of the junction and taken by our locomotives to the mine tracks of the various mines. When loaded they are delivered to the Chesapeake & Ohio at the Junction (Tr. 4069). We have no jurisdiction over the cars while they are on mine tracks and they can be held indefinitely as no bill cars or as empty cars for loading. The rules of the Chesapeake & Ohio govern. The average detention of cars on our mine tracks is approximately 5 days and the detention empty and loaded on our rails is about 4 hours. The Chesapeake & Ohio charges per diem on all cars, allowing no reclaim on cars interchanged for coal loading, and deduct the charges out of their settlements on

coal handled under through rates. I have an income statement of the railroad for 1926 and 1927.

(Said document received in evidence as Exhibit No. 482).

[fol. 816] In 1927 there was a deficit of $8,516.33 and in 1926 of $9,092.50. The road is in the hands of receivers and cannot pay per diem and operate. Its division for its terminal service rendered the mines is 25¢ per ton, the other traffic being of no consequence (Tr. 4070). The only through rates in effect are on coal. If per diem is charged this road, it is only a question of time when it will be forced to abandon operation. We ask the Commission to eliminate the per diem charges on empty cars delivered to the Winifrede for coal loading. I really think the railroad which serves only the Winifrede Coal Company is a plant facility and there should be no per diem. The Winifrede Coal Company mines are the only ones served by the Winifrede. We have another coal company, but it is in the hands of receivers. All of our traffic comes from the Winifrede Coal Company which owns the railroad. The mine operates its own mine tracks which it owns (Tr. 4071). There was an original distinction between the tracks operated by the Coal Company as a plant facility and those incorporated as a railroad, but I don't know how that happened. The railroad was built as a separate corporation and the coal companies set it up in business. If all the track was operated as a plant facility for the mine, the mine would be on the Chesapeake & Ohio and would be the same as any other mine served directly by the Chesapeake & Ohio (Tr. 4072). The same situation would obtain if the railroad company did not have to pay per diem on Chesapeake & Ohio cars. I do not want to leave the impression that I am trying to get free per diem. I either want adequate divisions to pay for the per diem or I want no per diem. Dealing only with per diem, any one of the two methods suggested would be satisfactory to us. I don't know why the Coal Company built a separately owned railroad, but it is one of the oldest roads in West Virginia. I think though they had to carry the mail and make a charge for the service (Tr. 4073). [fol. 817] At the time the road was built they handled freight for other people as there was a large acreage of timber. I am sure that the reason for building the road was not to get divisions out of the Chesapeake & Ohio.

The President of the Company for years would not make an application to the Commission or the Chesapeake & Ohio for divisions. He desired to operate the roads separately. The railroad has no control over cars at the mine because the Chesapeake & Ohio rates the mines, and requires that reports be made to its Car Distributor. The Car Distributor places the cars on the interchange and tells us to place that car at such and such a mine (Tr. 4074). We perform the service. If an empty car is placed at a Chesapeake & Ohio mine on the first of the month, it can be loaded and held 60 days or indefinitely with no demurrage. Our mine orders cars direct from the Chesapeake & Ohio because its rules and regulations require that. The Chesapeake & Ohio places the cars to us and tells us what to do, telling at what mines the cars are to be placed. The only difference between a mine on the Chesapeake & Ohio and the mine on our road is the item of terminal service, and we have to pay per diem while the cars are at the mines. The mine served directly by the Chesapeake & Ohio does not have demurrage. If I put in a demurrage charge on the Winifrede (Tr. 4075) or on the other roads I represent, it would break up the companies. They could not pay the demurrage and meet the competition of mines served directly by a trunk line. They would soon be out of business. This situation is not necessarily created by the fact that the Coal Company has interposed a separate railroad 5 miles long between itself and the Chesapeake & Ohio. When the Coal Company desired to open up its mine in West Virginia it asked the Chesapeake & Ohio to build a line. The Chesapeake & Ohio did not have money to build that line or other spurs which other coal companies wanted it to build, so the mines built the railroads themselves. Later on the Chesa- [fol. 818] peake & Ohio bought some of them up and are buying them now and operating them as branch lines. The Cabin Creek Branch was once a separate railroad but is now a branch perhaps 60 miles long (Tr. 4076). Some of these companies were luckier than others. We have 6 mines but only 5 are in use now and they are the property of the Winifrede Coal Company. The company is in the hands of receivers and works at about half time. It does not make shipments every day. The Chesapeake & Ohio billed us for approximately $4,000 per diem and when they found

we could not pay it they began to take it out of our divisions and have taken it out to the extent of about $700. The $4,000 accrued, I think, since January 1, 1926 (Tr. 4077).

The Middle Creek Railway is a common carrier incorporated in West Virginia and files tariffs and makes reports to the Corporation Commission and this Commission. It connects with the Baltimore & Ohio at Hartland, West Virginia and extends southeast for 4.77 miles with a grade against the empty of 1.68%. There are 10 mines on the line but only 2 are now working. At the present time the Middle Creek Coal Company is asking the Commission under its Docket 18478 for joint rates on coal. The Baltimore & Ohio has not presented any bills to the Middle Creek Railroad since it started to operate, the Commission having granted it a certificate of convenience and necessity in Finance Docket 5588. I understand that per diem is being held in abeyance until the Commission's decision in this proceeding (Tr. 4078). The Hartland Collieries Company owns the stock of the Middle Creek Railroad which is not a shipper. It is simply a land owning company. The Baltimore & Ohio has not charged us with car hire yet. Our tariffs became effective April 23, 1927 and our average detention is about 5 days. If the Commission should hold that we ought to pay per diem I do not know what would happen. [fol. 819] I do not know what the idea of the Baltimore & Ohio is in not presenting bills for per diem. In 1927, we handled 2,169 cars (Tr. 4079). We handle both freight and passenger service and carry mail and passengers. If the Commission decides that we should pay per diem on cars for coal loading, we ask that our divisions be increased so as to take care of per diem accruals on empties placed for coal loading. I am not asking for through rates, but I am asking you to do so if I have to pay per diem. I do not know on what theory the Commission would do it. 99% of our traffic is coal. The coal companies report direct to the car distributors of the Baltimore & Ohio, and the Baltimore & Ohio handles the situation the same as the Chesapeake & Ohio, except that the B. & O. does not charge per diem. I understand that shippers order cars direct from the Baltimore & Ohio (Tr. 4080).

The situation on the Stroud's Creek & Muddlety Railroad is the same as on the Middle Creek Railroad. It connects

with the Baltimore & Ohio at Allendale. The mines are about 9½ miles from that point and at the end of the line. The Baltimore & Ohio advised me that it would not charge per diem until after the decision in this case. The bulk of our tonnage is lumber, which originates at a point 7½ miles from our connection with the Baltimore & Ohio. That is handled on a demurrage basis, the Birch Valley Lumber Company being on the average agreement, and the Baltimore & Ohio charges detention on the cars from the time they place the empties on the interchange track at Allendale until we return them with billing. The Baltimore & Ohio charges demurrage against the Lumber Company on our rails, although we have demurrage rules in effect and work under the average agreement (Tr. 4081) but little or no demurrage accrues. I do not understand how the Baltimore & Ohio can assess demurrage against a consignee on somebody else's rails. I am speaking of the National Demurrage Rules. We have an average agreement with the lumber company. The Baltimore & Ohio has never collected demurrage from the Lumber Company as it gets cars back [fol. 820] in the free time, there being enough credits to offset the debits. If there was any demurrage the Baltimore & Ohio would collect it. I would ask the Lumber Company to pay me and it could pay the Baltimore & Ohio too if it wanted to. The Stroud's Creek line was built in 1921 and operated as a plant facility until 1925 (Tr. 4082) when the Tioga Coal Company brought a complaint asking for through rates. The Commission ordered those rates to become effective in September, 1925. The line handles coal, but most of its traffic is lumber. The Coal Company, not having received the district rates, went into the hands of receivers three weeks before the Commission's finding. The road is 9½ miles long and is located in West Virginia. It is owned by interests which own a large tract of land adjacent to the mines. They are not shippers and have no mill or connection. The only own the land and the railroad (Tr. 4083). None of the companies I represent have any freight cars except the Santa Fe Northwestern. Their cars are mostly log cars which are not interchanged. My roads either own their own locomotives or lease them (Tr. 4084.)

[fol. 821] L. R. MARTIN was called as a witness and, being duly sworn, testified as follows: I appear here on behalf of the Indiana Northern Railway Company, a standard gauge line located within the city limits of South Bend, Indiana, which was incorporated under the laws of Indiana some 25 years ago (Tr. 4085). The line is 3.75 miles in length, including main track and sidings, and the road was declared a common carrier January 3, 1916 by the Interstate Commerce Commission, 37 I. C. C. 491. We filed a tariff with that Commission and the Indiana Commission. The route serves several industries, the principal one being the Oliver Chilled Plow Works. The stock of the railroad is owned by officers of the Plow Works and members of the Oliver family. We have connections and interchange traffic with the New York Central, Grand Trunk, New Jersey, Indiana & Illinois Railroad, and Pennsylvania Railroad (the New Jersey is controlled by the Wabash), and also with the Michigan Central through the New York Central. We also handle considerable business interchanged between the Pennsylvania and Grand Trunk (Tr. 4086), and the Wabash and New York Central, but most of that traffic is for South Bend proper. The line is a member of the A. R. A. per diem agreement and our reclaim arrangement is as satisfactory as we could get. We have gone through considerable litigation with respect to absorptions and per diem and reclaim matters, but have worked out our problems satisfactorily. The road is a common carrier road, and as such, we should perhaps adhere to common carrier practice with respect to per diem and reclaim, and I would not like to see that arrangement disturbed so far as we are concerned. I think we can work out from time to time the proper figure to make us whole on car hire (Tr. 4087). On a short line railroad such as ours we can only operate on a flat switching charge, which should be high enough to give a return on its investment. We have shown deficits from year to year, but under a cost study we now have a switching rate that I think will be adequate. Our through business should in-
[fol. 822] crease as our ability and good service justifies it. We make a charge for intraplant service, which is a separate operation from the handling of other cars. In 1927 we handled 13,239 road haul cars in switch movement, on which absorption of $3.60 prevailed from September 1st for 9,274

entries. Our revenue will probably be in black figures in 1928 (Tr. 4088). At the Oliver plant we handle 5,892 carloads and 474 empties, a total handling of 28,879 cars. Since 1927 we have improved our track layout and our efficiency and can handle much more traffic with one engine. We have three locomotives and no other equipment. In the last three months we have been able to operate with one locomotive, except for two or three weeks, whereas prior to that we have had to put on another engine and hire an additional crew. In 1927 we handled 6,057 loads through interchange business (Tr. 4098), and 5,788 loads for the plow works. The movement of 6,057 cars was interchanged between railroads and the proprietary industry or other industries were not interested. We have four industries in addition to the proprietary industry. The total interchange would be 5,788 cars for the Oliver plant, plus 6,057 transfer cars, plus 1,394 cars for other industries. The traffic for the proprietary interest is somewhat less than half (Tr. 4090). We want the situation left is it is. We think this is a proper method to deal with a road such as ours, and I would dislike to see any interference. So far as I know the Commission has never said on what basis we should settle for cars. We were held to be a common carrier entitled to receive allowance for switching up to a maximum rate of $1.40, which has been changed by increases and reductions, and later cost study. We are now on a per diem with reclaim of $1.37 (Tr. 4091). We get no reclaim on intermediate switching as it is against the rules. We can reclaim one day, but we seldom have that, because we get the cars to the other roads. We have to pay per diem on every car, but the rules permit a [fol. 823] maximum reclaim of one day, which takes care of us in good shape on the intermediate business (Tr. 4092). We are not interested in a reclaim for our intraplant service, although we have to pay a dollar a day while trunk line cars are used in that service, and there are quite a number. Our entire service is switching service, and we participate in no joint rates. We had 5,892 cars in plant service in 1927. Any cross town service would be the intermediate service between two roads (Tr. 4093). I think our reclaim has been revised twice. Our first reclaim was 2.97 days, which lasted for about a year and a half. It was rechecked and brought down to what we supposed was where it be-

longed. The first reclaim was effective May 1, 1923, and the revised figure of 1.37 days was made effective June 1, 1926 (Tr. 4094). I do not think there is any difference between an industrial common carrier and a common carrier. Unless a road can show something to the public besides the proprietary interest, it is not such a strong common carrier. Some short roads should be treated as common carriers and others as plant facilities, and the Commission found us to be a common carrier. We are now losing some money on reclaim, but not as much as we made at the other figure, as the original figure of 2.97 was too high. We started at it on the basis of records of prior handling (Tr. 4095). We started then to get cars out quickly and our efforts were so successful that we made quite a lot of money. Another check was made in 1926 after about three years. It could have been made earlier, but we were satisfied to have it drift along as we were making money, but that was not the way to handle it. Car hire is not supposed to make a short line a lot of money. Some time ago our road was included in the list of short lines that sent some money to the recapture fund (Tr. 4096). Our accounts have been showing deficits for several years. In one year we made enough money on per diem and on our reclaim that we had to send 50 per cent to the recapture fund. That is wrong. We would rather keep it than give it to the Government. We have a com-
[fol. 824] plete set of records and it is easy to check the reclaim. Four representative months should be used to determine what should be allowed (Tr. 4097). We figured April, July and October, 1925, and January, 1926, as representative to get a fair figure for the A. R. A. to check. At present we are a member of the Per Diem Rules Agreement, and are on a per diem with reclaim and want to be let alone.

E. J. O. O'Brien, having been previously called as a witness, was recalled and testified:

When I testified at Kansas City the Kansas City, Kaw Valley & Western Railroad was in the hands of a receiver. It is now reorganized and is known as the Kansas City, Kaw Valley & Western Railroad Company and my testimony should apply to that road (Tr. 4098). I appear now to furnish certain information that was called for at the Kansas

City hearing. I have a statement showing how the amended per diem and reclaim rules of the A. R. A. affect this company from a revenue standpoint. It shows the regular and intermediate reclaim, and the amount of money this company lost in 1926 and 1927 by the amending of the rules.

(Said document received in evidence as Exhibit No. 483.)

At the Kansas City hearing we asked that the A. R. A. rules be amended and remain in effect as they were in August, 1920 (Tr. 4099), because the only change in rates or divisions since then was the increase in switching rates at Kansas City. In Exhibit 483 is a list of the tariffs showing switching rates that have been increased. Most of these increases were approved by this Commission, and I think they were sufficient to take care of high cost without the increases under the per diem rules. Exhibit 483 shows that the actual cost per car in 1926 was $1.28, and in 1927 it was $1.70 in excess of what the reclaim would have been under the 1920 rules. Our position is that the rates effective in [fol. 825] 1920 which are still in effect or which were increased, were predicated on the fact that each line should pay its intermediate per diem, because when the rates were established there was no intermediate per diem (Tr. 4100). We have always objected to intermediate reclaim and to reclaim by any railroad on its own cars handled in terminal switching. I fought the intermediate reclaim rule before the Kansas City Per Diem and Reclaim Association. The rule was published by the A. R. A. in July, 1925, but did not become effective at Kansas City until October, 1925. When we found that we could not prevent the amendment, we attacked the rates of the Kansas-Missouri Ry. and Terminal Co., and the Kansas City Southern Railroad in I. C. C. Docket 17842, P. C. C. No. 7902. The Examiner recommended that the case be dismissed and the Commission has not yet decided the case. I ask that the case be given consideration at this time. Either the rate or reclaim should be adjusted, as I do not think the examiner or the Commission intended to permit rate increases (Tr. 4102) and then permit the trunk lines to penalize the small lines by amending and correcting the per diem and reclaim rules. Our position has not changed since the Kansas City hearing and we still want the rules amended so as to eliminate intermediate reclaim and reclaim by a car owner on its own cars while in

switching service. We also want a correction of rule 6, prohibiting settlement between trunk lines and non-member short lines on other than the per diem basis without reclaim. Our road is an associate member of the A. R. A., but cannot vote. We want intermediate reclaim abolished because it costs us too much money. We own no cars in intermediate service, but are a road haul line and receive division through rates (Tr. 4103). We pay two intermediate reclaims on some cars, besides the terminal in lots of cases. Our line haul is 42 miles. We have paid per diem without free time or reclaim since 1916, but many short lines have testified that they hold cars as long as four days without per diem if they return them to the trunk line for road haul [fol. 826] service. We did not know this when the hearing was had at Kansas City, and now ask that since we are a short haul or feeder line, we are not only entitled to have the rules established as they were in 1920, but are also entitled to from two to four days free time on cars which we load (Tr. 4104). Naturally, our divisions are small in proportion to through rate. Our commodities are also known as cheap commodities. Since our inbound business does not take care of our equipment requirements for outbound business we have to get almost all of our equipment at Kansas City empty and haul it to the different industries, which increases the cost of handling. In 1926 the average cost per car on per diem and reclaim was $4.30. $10,953.73 was regular and intermediate reclaim, or .0474% of our entire freight revenue for 1926. In 1927 the average per car was $3.94, and our regular and intermediate reclaim was $11,049.42, or .0420% of our total freight revenue. Our total per diem and reclaim paid in 1926 was $47,538.09, or .2057% of our total freight revenue; and in 1927 it was $49,936.40, or .1936% of our total freight revenue. The actual figures paid the different lines are shown on Sheet 1 of Exhibit 483. The reclaims earned and not claimed are also actual figures (Tr. 4105). Under the word "intermediate" are intermediate reclaims and other reclaims we paid those particular roads during the year. The first column is the amount of regular reclaim or terminal reclaim on cars being unloaded on other lines while in switching service. Page 2 merely represents the year 1927. Page 3 shows that in 1926 we paid $1.28 per car more than we would have had to pay in 1920, and $1.70 per car

more in 1927 than in 1920 (Tr. 4106). Page 4 of the exhibit is a list of tariffs showing our switching charges at Kansas City. The particular change in the rule resulting in increased terminal reclaim was that permitting car owners to reclaim on their own equipment while in switching service on their own line.

[fol. 827] I gave that at Kansas City.

Cross-examination:

The intermediate lines which make intermediate reclaim upon us are switching lines performing switching service and getting a switching charge in practically all cases (Tr. 4107). It is my idea that those intermediate lines should pay per diem while they have the cars as their rates are predicated upon their taking cars of the lines. The theory of our litigation was that they were too high on the Kansas & Missouri Railway & Terminal Company in proportion to the other rates in Kansas City. We can reach line haul carriers at Kansas City via the Public Service Company (Tr. 4108) with which we have a connection. That is the only instance where we do not have to use the Kansas & Missouri Railway & Terminal Company. At one time I was general freight agent of the Terminal Company in name only. During part of that time there was no intermediate reclaim, as the rules had not been corrected. The other part of the time they received some reclaim, but I don't know what it was (Tr. 4109). The Commission has not finally decided Docket 17842, and I asked that that case be given consideration when this one was considered. I think that either the rates are too high or the reclaim is too high. I don't care which one is corrected, just so we get results. Since we have found out that other feeder lines are getting two or three days free time, we want that in addition to the abolition of the intermediate reclaim rule (Tr. 4110). We only came into this case because we did not get anywhere with the switching rates. We have to have relief from some source, and do not care whether it comes from rates or per diem reclaim. I would prefer both (Tr. 4111). The Kansas & Missouri Railway & Terminal Company is the property of the Kansas City Southern Railroad. My statement shows the number of cars to which the $1.28 and the $1.70 apply.

[fol. 828] DAWSON DITT, having been previously called as a witness, was recalled and testified as follows (Tr. 4112):

I have corrected Exhibit No. 34 for the record and have offered the corrected exhibit.

(Said document was received in evidence as Exhibit No. 34, Corrected.)

The original exhibit 34 showed the net effect upon the operating income of the Moshassuck Valley Railroad after allowing for car hire at the rate of $1 per day. The road is not paying car hire but is operating under the Birmingham Southern rule, but the schedule showed the effect upon the operating income in the event that it had paid car hire during the five years ending December 31, 1926. We then found that private cars had been included on which we did not pay a per diem but paid mileage at 1½ cents per mile (Tr. 4113). The corrected exhibit 34 gives the effect to our income while allowing 1½ cents per mile on private cars instead of $1 per day per diem. The difference is approximately $500.

Cross-examination:

The amounts in exhibit 34, corrected, which we would have paid but for the Commission's decision refers to the decision of the Commission in our divisions' case in 1920. The Commission gave us the Birmingham Southern rule for car hire settlement (Tr. 4114) instead of raising our division. The amounts shown in the second line are the amounts we would have had to pay had we paid per diem during those years, and are the amounts we would have paid had the rules of the Association been applied. I mean if we had paid straight per diem without any reclaim. We have the Birmingham Southern rule and practically all of our service is line haul (Tr. 4115). We handle no local business in foreign cars. We handle it in our own cars, which are not interchanged with the trunk lines.

[fol. 829] J. W. DAVIN was called as a witness and, being duly sworn, testified as follows:

I am Assistant Superintendent of Transportation of the Chesapeake & Ohio Railway, Huntington, W. Va. (Tr.

4116). I have been in that department of the Chesapeake & Ohio for seventeen years. The Big Sandy & Kentucky River Railroad does not perform any switching service for the Chesapeake & Ohio. There are no industries located at Dawkins, Kentucky, which is a point of interchange. The only switching there is in the weighing of cars for the benefit of the Big Sandy; the cars being immediately shoved onto our interchange track. Referring to the statement at the Chicago hearing that the Big Sandy stored cars for the Chesapeake & Ohio, will say that it has not stored any cars for the Chesapeake & Ohio (Tr. 4117). The mines on the Big Sandy give reports to the officials of that road, ordering cars for the next day's loading. These reports are given by the Big Sandy officials to our agent at Van Lear Junction and cars are supplied. Referring to the statement at the Chicago hearing that the Chesapeake & Ohio allots all cars on the Big Sandy, will say that the rating for mines on the Big Sandy is established by the Allotment Commission of the Chesapeake & Ohio in accordance with rules on file with this Commission, in order to save the Big Sandy that expense. The law does not require us to make the ratings for the mines as they are served by the Big Sandy. They are not located on the Chesapeake & Ohio and we rate our own mines (Tr. 4118). I don't know whether the law requires us to rate the mines of our dependent connections or not, but we do it. The mines forward a daily report to the Big Sandy offices at the end of each day, which are phoned by the Big Sandy to our local offices at the Junction. Cars are supplied in accordance with the orders placed by the Big Sandy. With respect to the statement at the Chicago hearing that the Chesapeake [fol. 830] & Ohio collected per diem on private line cars, will say that we collected per diem on 33 private line cars from October 1921 to September, 1927, a total of 77 days. Eleven days were adjusted in October, 1923 when it was called to our attention, and the other 66 days were adjusted in January, 1928 (Tr. 4119). I have a statement showing the detention of cars on the Big Sandy separated as between foreign cars, Chesapeake & Ohio coal cars, all Chesapeake & Ohio cars, and all cars by years from 1921 to 1927 inclusive.

(Said document received in evidence as Exhibit 484.)

The exhibit shows the average detention of the different classes of cars during that period.

Cross-examination:

When I said that the Big Sandy & Kentucky River Railway did not perform any switching for the Chesapeake & Ohio, I was referring to all equipment (Tr. 4120). We delivered cars to the Big Sandy on a joint interchange track. Per diem begins when we place them on the track. The bulk of the Big Sandy traffic is coal.

Mr. Browder: At pages 1621 to 1624 of the record at the Boston hearing Mr. Turner requested certain information regarding foreign per diem cars on the Owasco River Railway in 1925. We are preparing the exhibit giving the information.

(Said document received in evidence as Exhibit No. 485.) (Tr. 4121.)

L. S. Cass was called as a witness and, being duly sworn, testified as follows:

I am vice president of the American Short Line Railroad Association, and have been since September, 1918. During Federal control I dealt with the traffic department in the matter of divisions of rates, and after the Transportation Act I dealt with claims against the Government for deficits and loans to short line railroads (Tr. 4122). I am vice president in charge of the traffic department of the American Short Line Railroad Association, and I deal with members concerning traffic problems, divisions of rates, and their [fol. 831] general financial condition, also as regards operating conditions and transportation problems. I have been in railroad management and operation for 43 years, as telegraph operator, station agent, express messenger (Tr. 4123), brakeman, conductor, trainmaster, superintendent, assistant general manager, general traffic manager and vice president of the Chicago Great Western Railroad. I built the Waterloo, Cedar Falls & Northern Railroad, an electric carrier with 141 miles of track. In 1916 I was receiver of part of the Missouri Pacific Railroad System and was subsequently

president of the company that owned that property and dismantled it in 1926. I have dealt with the solicitation and routing of traffic, divisions of rates, car supply, car service and demurrage matters, and I am familiar with car hire and car hire methods under the old mileage system. I had experience with them prior to 1902 and before the adoption of the per diem rules by the A. R. A. (Tr. 4124). I am familiar with the A. R. A. per diem system as adopted in 1902, and as now in effect, and have had experience with it. I have also had occasion to deal with car supply from the standpoint of equipping a railroad with cars, the solicitation and control of traffic by control of car supply, and in the application of car hire rules to properties. I have also studied the subject matter in this investigation in relation to traffic principles. As between trunk line carriers and in the interest of trunk line carriers, I think the per diem rules and system is the best method of handling cars that I have known, but it does not fit the short line, as conditions of operation are so different (Tr. 4125). The trunk lines have long hauls, switching, and short haul traffic. Many short lines are only switching roads, and it does not make any difference whether they handle the business on line haul tariffs or on switching tariffs. They are switching railroads, and do not have the opportunity to wash out any inequalities in the operation of the per diem rules that [fol. 832] the trunk lines have. The trunk line may get the worst of it using a per diem rule at some point, and the best of it at other points. Many trunk lines get to use freight cars free. For example, on cars delivered to the Richmond, Fredericksburg & Potomac in Washington tonight at midnight and delivered in Richmond before midnight tomorrow night, no per diem is paid. A short line cannot do that as but few of them have an overhead traffic. Many trunk lines have a similar situation (Tr. 4126), as cars delivered to them at a junction point and delivered to the terminal within 24 hours frequently get free per diem. A trunk line member of the A. R. A. also gets free time on switching service, and car hire costs it nothing. If a little fellow, who is not a member, pays per diem, it frequently takes more than it earns, so the rules do not fit the little railroad. Getting free use of a car is not only true of exceptional roads like the Richmond, Fredericksburg & Potomac, but is true of some trunk lines and some short lines

(Tr. 4127). Some short lines, of course, deliver a car within 24 hours between midnight and midnight and escape per diem. That situation is exceptional with short lines, but it is not exceptional with long lines. Under the old mileage system nothing was counted against cars when they were idle, and nothing was paid for them. Under the per diem system a dollar a day is paid under the rules, even though the car may be receiving wear and tear in service on some days and on other days it may be idle (Tr. 4128). The haul is also materially longer on large lines than on short lines. On some lines east of Chicago, the traffic moves the entire distance from Chicago to New York. The lines running from the Pacific Coast to the Twin Cities get a 2,000 mile haul on most of their traffic. The citrus fruits on the Santa Fe moves to the Missouri River and Chicago. Those roads have short haul traffic, but their local business is small compared to their through business. Short lines [fol. 833] have nothing but a short haul. They can enjoy nothing else, and a large part of that is switching business. A large line gets a long per mile use of the car per day as contrasted with a short use per day (Tr. 4129). The short lines are at a disadvantage under the voting system of the A. R. A., and do not count at all. The votes of the A. R. A. are per car owner. Control is not by individual roads but the number of votes is controlled by the number of cars. Many short lines have only associate membership, which does not give them a vote. None of the proposed per diem rules are circulated among the associated members, as it does not make any difference what they think since they cannot vote. This is to the disadvantage of the short line, as car owners could agree to put a per diem rate on the short line that would take their entire revenue, if the Commission did not stop it (Tr. 4130). In years gone by the traffic departments of railroads would take car hire into consideration, but now the different divisions of the railroads have become specialized and a number of employees are in the business of handling the accounting of cars. I find that the fellows at the head of the departments of trunk lines are jealous. A traffic man does not want a car hire man to tell him what he should do on divisions, and the car hire man does not want the traffic man to tell him what he

shall do on divisions. The president must say that you must take the matter up with the different departments and he cannot supervise it all. In the last few years the different railroad departments have become surrounded by walls (Tr. 4131), and it takes a good deal to get to some fellow who will consider all the elements that surround a particular situation. I do not think short lines would get relief in divisions to offset the undue burden laid upon them by car hire methods, as car hire is a separate question. The matter of a fair rate to be paid for the use of a car under all circumstances should stand on its own bottom. [fol. 834] I do not think divisions enter into what car hire should or should not be. They are entirely distinct matters. After many years and with thousands of cases it might be possible to adjust the inequities of car hire to the short lines through the revenues and divisions of the revenues, but an attempt to do that means an increase in the rates, and that is against the public interest (Tr. 4132). Rates must be increased because a switching railroad with a switching tariff cannot get relief except by dealing with car hire. It could not be done in divisions as it has no division of rates, and the rates could not be increased without considering what the public and the State Commissions are going to say. Many short line rates are made upon an arbitrary over the junction rate. If you deal with that, you must take a fair division away from the trunk line and give part of it to the short line, or you must increase the rate of the short line. It is entirely impractical to take care of these inequalities through division (Tr. 4133). The per diem system has increased car supplies in the country to a point where further increase would be uneconomical, although it is not the only thing that has done that. Greater car capacity, greater movement per car per day, rapidity of loading and unloading, and more efficient terminal facilities have entered into the question of the present car supply, which is now beyond the requirements of the traffic of the country. Any additional car supply, until the traffic catches up with it, would be a burden upon the freight rates (Tr. 4134). I do not think that it would be practical for the short lines to contribute their quota of cars to the general supply. I have had experience with that matter in connection with loans under the Transportation Act, and think it would be uneconomical in view of the present ade-

quate car supply (Tr. 4135). Even if the car supply was [fol. 835] not adequate my answer would not be much different, as many of the short lines would not put their cars into circulation. A road that is a receiving road could not get its cars onto the trunk line railroads, as they would have no loading for them. It would be an unnecessary burden upon freight rates, if money was expended for freight cars to stand idle upon the tracks of a carrier which could not load them out. In the case of a short line having balanced traffic, it is unlikely it could get its cars onto the trunk line roads, as it would be uneconomical to move cars onto the trunk lines which should be loaded with the traffic which is actually loaded on their own cars. It would be uneconomical to have two cars move out with one empty when one car would be enough for the load (Tr. 4136). Before I have finished my testimony, I will furnish a substitute rule for paragraph (b) of rule 6, which I think will answer the question of how much a short line should pay for the use of cars. In the two cases cited where I conclude that the ownership of cars by short lines would be uneconomical, the expense to which I refer would be initially borne by the short line, but would eventually be a burden upon the freight rates of the country. I do not think a short line under these circumstances saves money by paying the trunk lines for using their cars as compared with the cost of owning its own cars (Tr. 4137). Based upon the testimony I have read in this case, it costs a dollar a day to own freight cars and it would cost the short lines that much. If it cost them a dollar a day to own freight cars or they paid a dollar a day to use cars belonging to someone else, they would be exactly in the same position. I have made a study of cars on the short line railroads of the country which are members of the American Short Line Railroad Association.

(Said document received in evidence as Exhibit No. 486.)

Out of a total short line mileage in the United States of about 21,000 miles, the American Short Line Railroad Association has 429 member roads with a total mileage of [fol. 836] 15,599 miles. They own a total of 33,677 freight cars, excluding work cars and other cars of that character (Tr. 4138). Of these cars, 37,070 are interchangeable and are listed in the Equipment Register. If those 429 car-

riers owned the same proportion of freight cars per mile of road as are now owned by trunk lines, they would own 11 cars per mile, which would make it necessary for them to purchase 114,000 freight cars. Taking into account the other carriers, which are not members of our Association, it would require 150,000 freight cars in addition to those now owned. At a dollar a day cost of ownership, we are around $55,000,000 per year, which would be added to the freight rate burden of the country with no benefit to the carriers who would buy them. We haven't the money to buy the cars, and if we did have the money to buy them we could not save anything on them after we got them (Tr. 4139). It would be a good deal better for the little fellows, if they had the money, to invest it in bonds, or use it to pay the car owners for the use of their cars, as there is no use in having cars stand around that cannot be used. The greatest confusion in this case comes because trunk lines are not only car owners but car users. A car is an instrumentality of transportation, no matter who owns it, and should be paid for at a fair rate on the cost of the car. If the matter of the trunk lines owning cars is divorced for a moment, there are cars in existence that cost somebody $1,000 to $2,500. On a car from Seattle to a little railroad in Pennsylvania (Tr. 4140), it is the duty of all the carriers in that territory to furnish some instrumentality to carry the freight the whole distance. What should be found is what part of the use of that instrumentality should be paid by each user over the entire distance. It makes no difference who owns the car, the test is what is a fair price to pay for the use of it for the entire distance and what part of the use shall be paid by the [fol. 837] different users. I think that the trunk lines in the country have found ways and means to pretty much balance up their per diem account and that is what has built up the large organizations of car accountants (Tr. 4141). When cars moved on mileage, the matter of collection was not important and did not require much organization. When the per diem rate moved up, the trunk line, which was short of cars, began to feel the pinch of an added or a high per diem rate, and found that it would be as economical to own its freight cars, as it might make its operating statement look a little better, and it could borrow the money by issuing car certificates to bankers and

paying 25 per cent down on the first payment. He might come out about the same place financially, but the statement looked a great deal better. I do not doubt but that the per diem rate has increased (Tr. 4142) the number of cars. In November, 1921 the per diem rate went to a dollar. It took part of 1922 to finance new cars, but in 1923 orders were placed for over 100,000 freight cars. My impression is that a large number of them were bought to even up per diem. So I think thtat a large number of trunk lines have their per diem pretty well evened up. Some of the annual reports of trunk lines stated that they were planning to buy cars to even up their per diem accounts, whereas, as a matter of fact they were not making any money out of it, as they had interest, cost and bookkeeping to pay. When they finally got their cars bought, the cars were more than half worn out, and went into the property on a depreciation basis, but the bookkeeping looked better (Tr. 4143). Because of car shortages during Federal control during 1920-22, I think the carriers were warranted in acquiring new equipment in 1923, and I have no criticism to make upon the purchase of additional cars up to this time. The latest reports I have seen show that they are not re- [fol. 838] pairing cars quite as rapidly, which is another positive proof that they now have more cars than are needed; if they did not have, their car repairing account would be going up and the bad order cars would be going down. I think it was a good investment since we have not had a car shortage for the last five years, and I think what I have said about car repairs proves that we have not had a car shortage (Tr. 4144). In the early days of railroad service cars were used for controlling and getting traffic. The real value of cars is the traffic that travels in them, and we would furnish cars to get the traffic. Under the old mileage basis, the question was to get cars to send off for getting business on the road. That is still in the minds of the traffic men who want traffic. They want to get business, and I do not think they would be as dogmatic about the per diem rules as the Association if they were handling them (Tr. 4145). I said I didn't believe anybody would buy 100,000 cars if they thought they could get only one dollar a day for them, because the per diem is only one question. Owner's repairs is a serious question, and that is paid out of the money you get for per diem. A lot of

things are done for the car as it starts out before it gets back that are charged to the owner of the car. Those items are taken into account in fixing per diem rate, but after they are considered there is no profit in per diem. You not only have to pay for the car while you are wearing it out, but you have got to keep it in repair while it is traveling over various railroads and when you get through you have a lot of cars that are unfit for further use (Tr. 4146). Per diem just about compensates the owner for the ownership of the car. If an owner turns a car over to a short line and gets nothing for it, I think that is the question between a car owner and car user. If a car owner is a car user and has been rewarded in the freight rate for the use of the car, it is a different question as to the use of the car when he [fol. 839] turns it over to the little fellow. I do not think per diem can be wiped out and still have car hire expense included in the freight rate. That would bring in divisions on interstate business fixed by the State Commissions; the question of changing arrangements on switching business, which is probably the best that could be fixed; and the question of taking more money away from the carrier connecting with the short line. If a five-mile road connects with a trunk line, and they have joint rates, but the division is made up by an arbitrary over the junction point plus an arbitrary taken away from the trunk line (Tr. 4147), and you are going to arrange that division, enough must be taken away from the trunk line earnings as the per diem costs the short line, or enough must be added to the junction point or short line to pay for the per diem. I have a rule for settling for the use of the car on the user basis, to which I have referred.

(Said document received in evidence as Exhibit No. 487.)

I would also like to offer the report of the Car Service Division of the A. R. A. dated May 26, 1927.

(Said document received in evidence as Exhibit No. 488.) (Tr. 4148.)

What I propose to do is place car hire on a mileage basis. Paragraph (b) of rule 6 is uneconomical, inconsistent, is close to a violation of the law, against public interest, and is an attempt by the Association to direct local affairs and

conditions without knowing anything about them. I think that the executives of the railroads are in a better position to deal with local matters than any associations, and that they should be permitted to do so. I think that the rule is close to a violation of the law because it is a distinct discrimination just as though passenger tariffs provided that a passenger six feet tall should ride for six cents a mile and a passenger five feet tall should pay four cents a mile (Tr. 4149). All roads are not treated alike on the same basis, because they are not allowed switching reclaim. [fol. 840] The qualification for that is the association to which they belong. I also have in mind the anti-trust law. The rule I propose is sufficiently elastic to permit railroads to deal among them in their own way. It is unthinkable that there should be any rule or association that prohibits the storing of empty cars for seasonal loading, and my rule permits that. It places a burden on short lines which do not return cars promptly and pays as much for private line cars as the Commission has said should be paid (Tr. 4150). It pays the same to trunk line railroads for their cars as the Commission has fixed for private cars, and as much as the trunk lines have fixed for cars owned by non-members. My rule comes completely into the picture and fixes the necessity of preserving the small carriers, regardless of how sacred the rules of the per diem association are among the trunk lines. It does not change the present rule 6 as between subscribers, as we have no fault to find with the action of subscriber lines. Any arrangement they make between themselves is satisfactory to us. The rule does fix the rate concerning the weak carriers that the trunk lines themselves have fixed by strong arm methods for the use of the cars of the little carriers (Tr. 4151). A short subscriber line gets reclaim on switching service and if the time they consume exceeds the reclaim, they pay for the excess. Under my rule the non-subscriber line would not have unlimited free time. It provides that no car hire is to be paid on cars handled in switching service for cars on connecting lines and no reclaim is to be received. I have noticed all through this testimony that someone has said, "You want something for nothing". We do not, but we do not want the trunk lines to have something for nothing. Rule B reverses the situation. The trunk lines say

they are strong enough to take something away for nothing, and that they are going to do it. They say they are [fol. 841] going to avail themselves of the privileges of the switching tariff and charge for their per diem. I know of a row between a short line and a trunk line where the short line would not pay anything and the trunk line would not issue a reclaim. It ran to $95,000 (Tr. 4152). I think demurrage is a proper basis for settlement of car hire as between carriers in this case, and that the Birmingham Southern case is a proper one. You will notice that if a carrier does not return a car within the time allowed, they then pay per diem. I do not think any rule should be allowed to be fixed to take trunk line cars and keep them indefinitely. When I said they should pay per diem, I meant penalty. It would be a factor to force the cars back and keep them moving (Tr. 4153). I think it would be well to strike out of my rule the words, "other than roads which have been declared industrial common carriers". I put it in because I was a little confused about industrial common carriers, and thought that the Commission would take cognizance of the situation. My proposed rule excludes industrial common carriers, and I had assumed the industrial common carriers had been provided for in the rules the Commission have already made. I was impressed that that was so. If it is not so, the words should not be left in, because an industrial common carrier stands in no different position as a railroad than any other common carrier (Tr. 4154). I think my proposed rule is elastic and that if it is put in by the Commission, the trunk lines and the short lines will get together and arrive at a plan that will be satisfactory to both under all conditions and the strong arm will disappear. It has merit as a general measure upon which adjustments should be made, and is a good starting point, at least (Tr. 4155). I felt that paragraph 12 of section 1 of the Act took care of short lines serving coal mines, but if it does not mean that the cars of trunk [fol. 842] lines shall be used in the same manner at mines upon short lines, without per diem, as they are upon trunk lines, something should be done in that connection. I think it does. The law was to take care of the coal industry without discrimination between mines as to car distribution, and that could not be done if per diem was charged for

holding cars on short lines. I think the law intended that the car should be furnished to the mines on the short line on the same charge that it is furnished to the mines located on the trunk line (Tr. 4156). Upon this theory I made no provision for coal mines. If I am mistaken, I would take paragraph 12 of section 1 and attach it to this rule, as that should not be left open, if there is any controversy on it. Without this character of relief the Commission will be flooded after this hearing is over with individual cases, and many carriers in the country will go into the scrap heap before relief can be granted (Tr. 4157). I do not think it makes any difference who owns a railroad any more than it does who owns the cars. A car owned by a trunk line has no more virtue than a car owned by a packer, and a railroad owned by an industry has no more different position than a railroad owned by anybody else, except that it is a godsend to its trunk line connections. I should be astonished if I could find a case where a trunk line grants such a carrier as much as it costs the trunk line to operate its own branch lines (Tr. 4158). Under my rule it would be possible for the trunk line to assume the car hire of a short line and collect all demurrage itself. The trunk line would collect the demurrage from the shippers (Tr. 4159) on the short line, but being appointed the agent of the short line for that purpose, as in the case where two roads have a joint agent, I don't think it would be necessary to put the demurrage through the books of the short line. If a shipment was delivered to a short line at an interchange point [fol. 843] and taken several miles to an industry on the short line, what I have said would be reversed as the agent at the destination would also represent the trunk line (Tr. 4160). He could represent the trunk line even though it doesn't get there, as a trunk line has agencies all over the country. I agree that the car would be in possession of the short line, and there might be something in the accounting rules of the Commission requiring the short line to put demurrage through its accounts, but there is no trouble in having an agent represent a trunk line which does not get to the point where the agent is. The shipment would be in the possession of the short line at destination, but the trunk line, several miles away, could collect the demurrage by an agreement that the agent of the short line should act as the agent of the trunk line in that situation (Tr. 4161).

There would be no trouble about having a joint agent represent two railroads for a specific duty at any point, even though not upon either railroad; although there may be some accounting rule which would require that the demurrage be taken into the accounts of the short line. In such a case the demurrage tariff would be published by the trunk line, unless there is some accounting rule which prohibits it. I see no reason why the trunk line, which publishes an actual rate and makes the short line a party to it through concurrence, could not publish a demurrage charge (Tr. 4162). Such a tariff would be concurred in by the short line. I do not know that the charge would be one of the short line and, if there is no rule prohibiting it, I see no reason why the tariff should not be published covering the charges on the shipment all the way through (Tr. 4163). If we assume a shipment from a trunk line turned over to a short line at an interchange point (Tr. 4165) and delivered on the short line, but with another short line connected with the first short line, I think it would be the busi-
[fol. 844] ness of the second short line, under my rule, to pay mileage on the car to the first short line, and the first short line would pay it to the connecting line. I do not see how the third short line, which did not handle the traffic at all, could participate. Demurrage accrues on the short line which is paying for the car, but I think that it could be arranged for the trunk line to go off its rails and assess demurrage against an industry which it does not reach (Tr. 4165). That would have to be arranged between the short line and the trunk line. If the revenues of a trunk line are the same on a car delivered to shippers on its own rails on a charge which includes spotting and free time as on a car delivered to a connecting short line at the same place, the short line placing and removing the car, I think the trunk line's treatment of the short line should be the same as its treatment of the industry (Tr. 4166). There might be cases where a short line should at least be allowed the two days' free time which trunk lines allow to shippers. If a trunk line gets the same rate and earnings to the junction point, I would say the short line should be treated the same as the shipper. I also think that the industrial railroads should be used the same as though the industries were upon the rails of the trunk line. I think we should have enough elasticity so that each case can be governed by its

own merits (Tr. 4168). When I spoke about industrial railroads, I did not have in mind plant facility roads, as I do not understand that they enter into the situation (Tr. 4169). I should not want to name any railroad as a plant facility. Although there are a lot that are in the twilight zone, I do not wish to prejudice their case. I see no reason for the allowance of reclaim on short haul traffic moving under a switching tariff, and denying an allowance when it moves under a line haul tariff, all other cimcumstances being the [fol. 845] same. Rule 6 with paragraph (b) annexed, as it now stands, is very detrimental to the public interest (Tr. 4170). Unless some relief is found in this case, or some action is taken by the Association to relieve them of car hire costs many of these little railroads will be involved materially into public interest, and it will destroy many of these properties. A great deal of mileage in the country is now in jeopardy. The per diem rate since 1910 has advanced 500%. In fact, it has gone from nothing to a dollar a day for most of the little roads, and as much as 40 and 50% of their income is taken to pay car hire. When I say that, I am speaking of railroads which have testified in the case and rely on the records to prove my statement. Recently, a railroad in Illinois was saved by the public putting up $161,000 of their own money (Tr. 4171). In the first year they lost $115,000 and of that amount $49,000 was taken to pay car hire. That road was the Chicago, Springfield & St. Louis, 78 miles long, and the figures I give are for 1927. Per diem represented 42% of the loss, and if that condition continues the road will stop within two or three years. If it does, the people will lose not only their $161,000, but their investment in the towns. I know all about the railroad, and I do not have the wrong one. It was cut up into three railroads, and I represent the largest creditor of the property (Tr. 4172). I am telling you what I actually know about it. In 1926 I dismantled 171 miles of main line and the people along the road lost $13,000,000 in their investments. It is costing the farmers $285,000 a year to get their freight to market, and if per diem is piled on these railroads beyond their ability to function you go distinctly into the wealth of the Nation. I think it has always been desirable for the rules to permit connecting carriers to store cars which might otherwise be idle

[fol. 846] for anticipated loading. It is in the interest of the country, and I think the trunk lines are now doing it. I think they are assembling cars and disregarding the rules, which require that they must pay per diem on cars so held. The managements in that respect are wiser than the Per Diem Association, and that is one reason why I think Rule B is not capable of enforcement (Tr. 4173). Some character of relief must be found. I think the rule I have offered in place of Paragraph B of Rule 6 is workable and will give material relief without serious injury to car owners. Relief must be found, or transportation facilities amounting to millions of dollars of investments are going to be destroyed.

Cross-examination:

I think the present code of per diem rules is a good thing for application between trunk lines. It is the wisest method that I have known of (Tr. 4174). I do not mean that if they are strictly adhered to they are the best rules, but as they are being operated by the trunk lines they are the best methods of operation that I have known. The trunk lines disregard some rules. I refer to departures from Paragraph (b) of Rule 6; the storing of cars for seasonable loading, saving per diem and things of that sort. Without committing myself that they are the only objections, the things I mentioned are wholly objectionable. The two things I speak of are the only ones I can think of at this moment (Tr. 4175). I have not thought of other things, as I regard them as keys to the general situation. Without further thought I would say that with those two exceptions, the per diem system which operates under the per diem rules of the A. R. A. is all right as to trunk lines. The rules are improper for application to a non-subscriber, as they charge him a greater proportion for the use of the car than his proportion of the rate. Taking into consideration the use of the car and the surrounding conditions, he would pay too much per [fol. 847] diem. My distinction between the railroads as to which the rules are proper, and those to which the rules are improper rests very largely upon the proportion of revenue on traffic in excess of hauling it (Tr. 4176). I think that the distance of hauling has nothing to do with car expense. The character of service without regard to the dis-

tance is important. Under the present rule a dollar a day is paid for the car, no matter what distance it is hauled, or what service is performed. That is a rigid rule. If it was provided that no rates should be paid at less than $1 per ton per mile, such a rigid rule would upset the whole freight rate of the country (Tr. 4177). A rule requiring a dollar a day to be paid for the use of a car, regardless of the use being made of it, upsets the economic situation; a terminal is a different situation; and a short haul is a different situation. Some railroads pay no per diem at all on certain movements, but where a carrier has nothing but a terminal movement and pays a dollar a day, then it pays an unfair proportion of the car hire. I do not conclude that length of haul is not an important factor in distributing car expense. I mean that it is not an important controlling factor in distributing car hire. Just the same as I think that the length of haul has no place in the question of divisions of rates. If all divisions were on a mileage pro-rate (Tr. 4178), it would break fifty or sixty thousand miles of railroad and so a rigid per diem rule without regard to the character of use has no more place in the situation. When I say character of use, I do not mean length of haul; loading is one use; switching another; road haul service another; delivering to another carrier through a terminal is another; and delivering it to a terminal line for delivery at another destination is another. I think car hire should be distributed among the carriers ac-
[fol. 848] cording to the services I have outlined, and performed by each one of them based upon the division of the revenues, which is based upon the character of service (Tr. 4179). Revenue is based upon the character of the service, and the use of the car should be based upon the revenue. I would not divide car hire expense between all roads in the same proportion as revenue is divided. I would divide it in accordance with my rule. It is impractical to relieve the financial condition of short lines by an increase in rates, because the public will be on the Commission's neck and stop it (Tr. 4180). A charge against the public for public service performed is proper, but has not always proven out. The railroads of the northwest have been wanting a fair return, but the Commission has not yet granted it. I said that many short lines perform what is a switch movement, whether the movement was under a switching tariff or under a line haul tariff (Tr. 4181). I distinguish between a switching service

and a line haul service by the published tariffs. I have not considered how it could otherwise be distinguished. I say that some short lines perform a switching service no matter how their charges are assessed, because I know of many short lines in that situation. I can name many of them that perform a switching service under a line haul rate. Many line haul rates and switching rates travel over the same track. I was President of the Waterloo, Cedar Falls & Northern for several years and had a big terminal in Waterloo (Tr. 4182). Then and now traffic traveled over that road on a line haul and a switching tariff. There was no distinction except that in many cases the line haul paid less than the switching rate. I do not care to say how the reclaim provisions of the A. R. A. should be applied as between subscribers, as I have no quarrel with the A. R. A. per diem rules. If the railroads of the country can live under the rules, it is all right with me and I am not attempting to make per diem rules for the A. R. A. I am attempting to amend [fol. 849] the rules which I regard as unworkable, and bring immediate relief to many carriers that need it, instead of piling up hundreds and hundreds of cases on the Commission to arrive at the same place (Tr. 4183). I think that the Per Diem Association should join with the Commission in attempting to find relief, instead of saying that it wants every dollar that it can get. The rule I have written is a better rule to distinguish between per diem that should be subjected to reclaim and per diem that should not be subjected to reclaim other than the method now prescribed. It relates to reclaim. I don't think there is any justification for reclaim because of the collection of charges under a switching tariff, as distinguished from a line haul tariff. I am not offering any other method at all. I am offering relief to the short line roads and not to the Association, which can take care of itself (Tr. 4184). I said that the percentage of bad order cars is now increasing. I have the figures with me. They are the figures of the American Railway Association, and are in the Railroad Data of March 23, 1928, issued by the Committee on Public Relations of the Eastern Railroads. I don't know whether it covers all the roads in the country or not, but I am taking their word for it (Tr. 4185). The report reads that freight cars in need of repairs on March 1st totaled 138,970, or

6.2% of the number on line, according to reports filed by the carriers with the Car Service Division of the American Railway Association, an increase of 2,524 cars since February 15, at which time there was 6%. Cars in need of heavy repair on March 1 totaled 98,424, or 4.4%, an increase of 2,086 since February 15. Cars in need of light repairs totaled 40,446, or 1.8%, an increase of 438 since February 15. I think I said that the increase in the per diem rate was one factor responsible for an increase in [fol. 850] car ownership and that the increase in miles per day capacity of cars, the more prompt loading of cars entered into it (Tr. 4186). I don't know how many freight cars there were on Class I railroads in 1924, nor how many there were in each year since 1920. I don't know the relationship between any two years since 1920. I do not know the character of equipment of the 27,000 interchangeable freight cars shown on Exhibit No. 486 (Tr. 4187). They are registered in the Railway Equipment Register as interchangeable. I know something about the cars from my own observation, and I think you will find that a lot of these cars are pretty old. I have taken the Equipment Register as my authority for the number. In Exhibit No. 487 the statement "No car hire to be paid on cars handled in switching service and connecting lines" means that a non-subscriber would pay no per diem and no mileage on a car handled in terminal switching service, although that would depend (Tr. 4188) on whether the car was on the road more than 24 hours, if received empty and returned empty more than 72 hours; if loaded in one direction and empty in the other more than 72 hours; and 144 hours, if loaded in both directions. After those periods demurrage would accrue against both cars, but if they were returned within the time provided, nothing would accrue. The rule provides that no car hire is to be paid on cars handled in switching service and connecting lines, and no reclaim is to be received and settlement to be made with the direct connecting line at the current demurrage rate unless otherwise legally provided for after the following time has elapsed; and no car hire to be paid until after the following time has elapsed (Tr. 4189). I think it would be more clear if a comma was put after the word "received." Settlement is to be made at the direct connecting line at the current demurrage rate. That is what I meant when I

wrote the rule. A standard mileage rate is the rate fixed by the Interstate Commerce Commission and a non-sub-
[fol. 851] scriber will pay that rate whenever he handles the car in line haul service; and he will pay the demurrage rate subject to free time when he handles it in switching service and line haul service. If a car is delivered to me as a short line (Tr. 4190), I report the mileage that is earned and if I don't deliver the car back within the time specified, then I pay the current demurrage rate. The mileage is paid when the car is moving over the road on a line haul rate. The line haul is one thing, and the demurrage is to get the car back. If a line haul car is returned within the time, all that is paid is mileage, and if a switch car is returned within the time nothing is paid. If they are not delivered back within the time, then they pay demurrage charges, and in the case of the line haul car the demurrage charges are in addition to the mileage rate. That was my intention when writing the rule (Tr. 4191). In speaking of a standard mileage rate, I am talking about rates fixed by the Commission for the use of freight cars. They fixed a mileage rate in the private car case (Tr. 4192). In my dealing with this subject the man who owns the car cuts no figure and the charge would have to be paid on a tank car regardless of ownership — Standard Oil Company. Confusion here is because we have not divorced car ownership from car use. I am dealing with car users and not car ownership. I am familiar with the decision of the Commission in the private car case in 50 I. C. C. (Tr. 4193). It makes no difference who owns the car, the mileage basis fixed by the Commission is what must be paid for the use of anybody's car (Tr. 4194). I got the periods of free time in my rule from the Birmingham Southern rules, fixed by the Commission. My rule is substantially the same as the Birmingham Southern basis fixed by the Commission, except that on line haul traffic a short line makes a mileage payment, and there is no provision for an
[fol. 852] average agreement. Also, I am attempting to make legal the strong arm action now taken in the payment of mileage for non-members' cars used by member lines (Tr. 4195). The Birmingham Southern rules do not require the short lines to pay any mileage. My rule also gets away from reclaim. We don't want your cars for nothing and we don't propose to switch for you for noth-

ing. I would not want to go so far as to say that my rule is the Birmingham Southern basis with the two exceptions mentioned. I don't know that I intended that (Tr. 4196). If it is that, then I have not made a mistake, but it is as it ought to be. Even if it was proven that it was a copy of the Birmingham Southern rules, I still think it is a good rule for the short lines. Under my rule any railroad can become a non-subscriber and take advantage of it. If a trunk line can perform a loaded service in line haul movement in both directions over any distance and get the loaded car back (Tr. 4197) within 144 hours, it would only have to pay mileage on the car. Any railroad might adopt this rule. If the Alton Railroad was a non-subscriber and could take a load from Chicago to Springfield and Springfield back to Chicago in 144 hours, all it would have to pay the owner of the car for the use of it would be a mileage rate. I think that is the proper basis of car hire. My rule contemplates that a road must accept it for all its operations and not for part of them. It must either be a member of the per diem agreement and do business under it, or be a non-member and come within the rule prescribed for non-members (Tr. 4198). The length of line that a road would have to have before this method of settlement would become unprofitable would depend upon the mileage rate in effect. If the mileage rate was one cent and the car was moved 100 miles in 24 hours, the mileage rate and the per diem rate would be the same. The length a railroad would [fol. 853] have to be to make money and under my rule as against paying per diem would depend on car ownership and length of road. The Butte, Anaconda & Pacific, with 76 miles of road, owning 1,444 interchangeable freight cars, could probably not afford to come under the rule. It would probably be better off to let their cars out under per diem (Tr. 4199). The Cambria & Indiana Railroad, 50 miles long and owning 3,466 interchangeable freight cars, could not afford to come under the rule. It is better off as it is. The effect of my rule is not quite to relieve a railroad having no cars of the necessity of paying for them. Its effect is to make all carriers pay what they ought to pay in consideration of the divisions of revenue they get and the use they make of the cars. Back of that is the public interest

to which the trunk lines must give way. My rule is not mandatory (Tr. 4200), and under it a subscriber and a non-subscriber could agree upon any basis of settlement they wanted to. There is no doubt that it is a good thing. I think it would be much better to permit a short line, which controls a large amount of traffic to dicker with a trunk line and get the best basis of settlement it could. The thing I have in mind in providing this rule is to give relief in the quickest manner and relieve the situation on your short line railroads on which the public are dependent. I agree absolutely that the owner of the freight car is entitled to payment for that car from somebody else for using it (Tr. 4201). I know about the desperate situation of the short lines and am employed to protect their interests. I do not say that the car owners should not be paid on a proper basis for the use of their cars, but if a trunk line is prosperous and it can be done without destroying the trunk line, we might go so far as to take not only the use of the car, but the total revenue of the car. That is how far I think the [fol. 854] public interest is entitled to go. I don't think my rule relieves the short line of paying a car owner the amount he is entitled to receive and passes it to the connecting trunk line (Tr. 4202). The divisions of responsibility are between the trunk line and the short line, as it should be. Under my rule a short line could use cars in local service, if they paid the demurrage rate, but I don't think they could use them without exceeding the times I have specified. There is no situation under the proposed rule which would permit the short line to use the car in its own service without paying for it. A short line should pay for the use of a trunk line car in its own local business at a fair price (Tr. 4203). I am not proposing any rule which permits the use of cars by short line in local service without payment. Such a rule ought not to be permitted, and I don't believe the Commission would permit it. I don't know that the Birmingham Southern rules have permitted it, but if they have, there is something wrong with the rules. My experience leads me to believe that under my rule the short line will not fatten up on the use of local cars under the free time provided (Tr. 4204). Under my rule all the roads would assume the accounting responsibility as they do now, but I do not agree that a short line which uses the trunk line's car should do its fair share of the accounting.

That is one of the weakest points in the per diem rules and throws a burden upon transportation. A duplication of accounting is unnecessary. Under my rule a short line would account only in connection with the trunk line with which it connected. It would not have to keep books to account with roads all over the United States. If our members went along with accounting in the manner in which it is kept by the trunk lines, it would impose an unnecessary burden onto the traffic of the country to the extent of $500,000 a month (Tr. 4205). No part of that burden would go [fol. 855] back onto the trunk lines. If the Burlington Railroad as a car owner had to exchange reports with all short lines in the country that might get hold of its cars, it would put an additional burden on the Burlington. It would be easier for that road to get its reports from the trunk lines than from all the short lines. Under my rule, if a shipment moved over two short lines, the second short line would report its mileage to the first short line, and the first short line would report the total mileage to the connection from which it got the car. It would make no difference how many roads the car moved over. The duty would be upon the first non-member to report all mileage that the car made (Tr. 4206) on all its rails and its connecting line rails to its trunk line connection. The demurrage would be paid by the road upon which it accrued. If the intermediate line had handled the car without delay, yet the free time had expired, the intermediate line would collect from the line to which it delivered the car and would pay to its connection. I think that is provided for by the rule (Tr. 4207). My rule does not provide for free time. It provides for mileage payment and demurrage in addition, if the car is not back within the specified time. If a trunk line delivers a car to a short line, which delivers it to another short line, the first short line would pay the mileage, and the second short line would pay mileage plus demurrage for failure to return the car (Tr. 4208). I think that is the way the rule would be construed by the various railroads. My rule contemplates that trunk line subscribers to the per diem rules shall pay the per diem under those rules to the owning line. To the extent of the difference between what the connecting road gets under my mileage scheme and what it pays in per diem to the owning road,

its car hire expense is increased (Tr. 4209). The L. & N., for example, has many branches, and I think can treat its short line connections as liberally as it treats its branches. [fol. 856] If a trunk line treats an independent railroad as liberally as it treats its own branch line, it would pay the independent road more than it is paying now in almost every instance. If it pays mileage on one or two cars from the junction out to the end of the line, it is paying more to the trunk line that is responsible to the owner of the car for per diem, and the trunk line is getting off better than it would if it moved the car on a branch line. I do not regard a mileage payment to a trunk line which is responsible to the car owner for per diem as a burden upon the trunk line, but regard the trunk line as being more liberally treated (Tr. 4210) to the extent to which mileage is paid. I don't own any short lines or securities in them, but I own a lot of trunk line securities. I think my rule permits trunk lines and short lines to make any sort of a car hire agreement they want to, and that is what I am in favor of. I think uniform treatment of short line connections is entirely wrong (Tr. 4211). I think the attempted uniformity in the per diem rules is one of its greatest curses. I have read this record from A to Israel, and I did not get any idea that some short lines were in favor of uniformity (Tr. 4212). My rule lays down no test for saying whether a railroad shall or shall not be a subscriber, but I did put in the language in parenthesis "other than roads which have been declared industrial common carriers." I am not certain but what these words should be stricken out of the rule, as the Commission is the only one that can decide it (Tr. 4213). With respect to a railroad not an industrial carrier, I think the road itself should determine whether or not it shall be a subscriber. It should not be left to the election of the A. R. A. I am not attempting to make a rule for an industrial common carrier as that question has been before the Commission so many times. I think it might be wise to strike out the language in parenthesis. I am [fol. 857] sure the examiner will inquire into that situation. If it ought to come out of the rule, it will be taken out (Tr. 4214). I understood that the cases under which the Birmingham Southern rule was prescribed have been reopened and consolidated with this case, and I tried to make my rule without quarrelling with any of the things

that had gone before. I have not tried to make a rule for the industrial common carriers to cover that. If the Commission thinks that the industrial carrier proviso should be stricken out, it will be the best judge of that. The rule will be applied to those carriers. I see no reason for a difference of treatment to industrial roads, as they are entitled to the same character of treatment, and perhaps more liberal (Tr. 4215)., as they have taken the burden of furnishing facilities off the trunk line. If an industrial carrier goes out of business, a greater burden would be put on the trunk line than on anyone else (Tr. 4216). If we assume that the Waterloo, Cedar Falls & Northern Railroad is a non-subscriber and takes a Pennsylvania car under load for 15 miles and hauls it back 15 miles empty to the Illinois Central within 72 hours, it would pay the mileage rate to the road that delivered the car to it at a rate of one cent a mile. It would pay 15¢ for taking the car down and 15¢ for bringing it back, or a total of 30¢. That is all it would pay, if it was back in 72 hours (Tr. 4217). The only bookkeeping by the Waterloo, Cedar Falls & Northern Railroad would be that it would report that the Pennsylvania car made 30 miles in a certain month. The 30¢ due would be reported to the Illinois Central in the monthly interchange report, the Illinios Central would include that amount in its draft and the matter settled. The Illinois Central would be paying the Pennsylvania a dollar a day for the time the car was on the I. C. and on the W. C. F. & N. If the car belonged to the Union Tank Car Company, the W. C. F. & N. would pay the same amount to the I. C., and the I. C. would report it to the car owner [fol. 858] (Tr. 4218). If the car belonged to the Illinois Central, the same process would be gone through, except that the Illinois Central would not have to report the car, or pay anything on it to anybody else. The Illinois Central car would be a foreign car to the W. C F. & N. I think the present rules apply to such a case, and under them a foreign car is anybody's car, except the home road's car (Tr. 4219). The mileage rates of one and a half cents and two cents in Jones' tariff I. C. C. 1677 are the mileage rates to which I referred, if they are fixed by the Commission (Tr. 4220). My idea is that if the Commission fixed the mileage rate under my rule, it would be fixed in this case, and would be the standard mileage rate. Under the present

arrangement I understand that the trunk lines pay a mileage rate which they themselves fix on cars used by them and owned by a non-subscriber (Tr. 4221). They strong-armed the little fellow. They pay mileage at the rates fixed in their tariff, which I think is the tariff just referred to. I don't know how much the Pennsylvania should pay for the freight car belonging to a non-subscriber. The only thing I have found that fixes it is the strong arm of the Association. They may have a resolution, but if the tariff is not fixed by the Commission, it is not a legal tariff (Tr. 4222). The doubt of its being a legal tariff caused me to make a provision in the last paragraph of my rule to cover the matter. When I speak of a standard mileage rate for cars I have in mind a rate that the Commission shall fix, and not necessarily the figure now being paid on private cars. If the Commission adopts my rule they must fix the mileage rate, and should do so. There is too much uncertainty now, and it is apt to cause a lot of trouble, which would be an obstruction to traffic (Tr. 4223).

[fol. 859] IRELAND HAMPTON was called as a witness and, being duly sworn, testified as follows:

I am a lawyer and have been a student of industrial statistics, particularly transportation statistics for a number of years, that it has been necessary since about 1903, and I have been more or less constantly concerned with service and rates for 18 years (Tr. 4224). I have made a study of the statistics of the Interstate Commerce Commission, especially relating to Class 2 and Class 3 railroads in relation to the subject matter of this proceeding; and also with relation to Class 1 roads. I got into the case in March of last year, and it seems to me that the weakness has been that the witnesses have been confusing car ownership and car use, starting with the assumption that the use of the car must be reasonably compensated from some source. It was necessary to study per diem with reference to Class 1 roads. I am presenting an exhibit which is a study or the accumulation and arrangement of data upon which a study might be made (Tr. 4225). I have in this study assumed that all cars are owned by a pool to which all railroads

m[illegible]t account. 1925 was the last year for which the figures were available. The statistical deductions in the exhibit are purely mathematical and express my mathematical computations. I have prepared an exhibit showing the result of my study of these statistics (Tr. 4226). Appendix A was furnished from the printer's proofs of the annual report of the Commission last year before it was issued. I also had some people go over the original records and short line reports for that year, and prepared Appendix B, which gives fuller data than the annual reports disclosed. Appendix C is a convenient arrangement of data from Appendix A and Appendix B.

[fol. 860] Mr. Hitt: The exhibit is self-explanatory, and we would like to offer it in evidence at this time.

Mr. Towner: I have decided objections to this class of testimony (Tr. 4227). I notice from the statement given me there are four major considerations referred to, the first one being as to whether or not short line railroads have been compensated for increased freight car per diem charges assessed from time to time, since the year 1902, by increase of divisions of the through rate. That is obviously a matter that is not on trial at this time. I know nothing about it. And I cannot see it is of use to anybody in determining the question of car hire.

No. 2 is perhaps a matter that might properly be discussed, although I have not gone far enough in this to know what is to be said about this.

No. 3 is an inquiry as to whether or not the failure of the short line to earn a fair return on the capital investment is affected by the inequitable assessment of per diem, or by not receiving sufficient divisions; another matter that is obviously not on trial in this case, and which I am not prepared to try, frankly.

No. 4 depends to a large extent on the conclusions reached under 1 and 3. I must confess this: There are a lot of things in this record to which I have objected, because they dealt with divisions, where a railroad ought to have freight cars and matters of that sort. Nevertheless, it was offered in an isolated manner, and perhaps no harm was done in receiving it in the record, but here is a serious, concentrated effort to make the case turn upon these points, as to which I am not prepared to represent the Association.

I don't know anything about these things. They have nothing to do with car hire, (Tr. 4228).

[fol. 861] Director Bartel: Let us put this over until morning. I have not had a chance to look it over. I will look it over in the meantime.

The Witness: Almost all the record of the March hearing is taken up by Mr. Crawford's testimony, in which it is said that a way should be found, if possible, to get the short line railroads a fair rate-upon capital investment,—I don't know at what page, but my memory is quite clear. The question of whether or not divisions of freights has not absorbed the gradual tendency of per diem increase occupies a considerable part of the record of the March hearing (Tr. 4229).

Mr. Towner: It has occupied it over my protest at all times, however, and if it is in there, it is in there because my objections were overruled. Now, as I have pointed out, perhaps this isolated testimony has not done any harm, or any material harm, but when it is put in a concentrated shape, such as this is apparently, as an important point upon which the case is liable to turn, I think it should be objected to.

Mr. Hitt: I don't suppose it is necessary for me to point out all through this hearing these statistics of operating results and so forth have been made a part of the case, and much of that has been called for by counsel for the American Railway Association, and counsel for the American Railway Association has repeatedly injected that into his cross examination (Tr. 4230). This is a part of the general picture of the whole situation, without which a proper determination of the matter cannot be made.

The Witness: My statistics are taken from annual reports filed with the Commission. Appendix A was taken from the Commission's proofs of the annual report (Tr. 4231). Appendix B was taken direct from the reports of the roads themselves. The detail for each road will appear in Appendix B.

[fol. 862] Mr. Hitt: Mr. Director, that concludes all the witnesses we have at this time, with one exception, a witness by the name of John A. Strayer of Atlanta. He presented an exhibit, which I submitted to Mr. Towner, and

I would like to ask if he is willing to have that exhibit admitted without having Mr. Strayer come up here. Mr. Strayer had to attend another very important meeting.

Director Bartel: Any objection to that?

Mr. Towner: Yes, I have the same objection to this exhibit as the exhibit just offered; not because Mr. Strayer is not here—understand that—but the nature of the material. It concludes on the last page as follows: "These are merely illustrative absorptions and switching charges at various points within southern territory. Similar illustrations could (Tr. 4232) be multiplied at numbers of competitive points, but it is unnecessary to burden the record with further illustrations, as the purpose of these exhibits is to illustrate the standard railroads are absorbing on competitive traffic amounts approximating the local rates of short lines for distances of 5 miles and under." And so forth in the same vain. What some car absorptions at competitive points have got to do with car hire, I do not know.

Director Bartel: Suppose we reserve that until in the morning also.

Mr. Hitt: That is all (Tr. 4233).

Director Bartel: With respect to the exhibit which you proposed to offer yesterday, I went over it to some extent last night and I am free to confess that I do not understand a good part of it. There is much that seems to be purely argumentative, and a good part of it seems to be concerning matters not in issue in this proceeding (Tr. 4234). I therefore suggest that you withdraw this exhibit and extract such portions as are pertinent to this and eliminate the argument, and then we will consider the admission of [fol. 863] the balance of it. With respect to the statement of Mr. Streyer, it seems to me it is wholly inadmissible on the ground that Mr. Streyer is not here for a cross-examination

Mr. Hitt: So far as this exhibit is concerned, I would like to offer now appendices A, B and C, and all the matter that appears in the (Tr. 4235) preliminary portion of the exhibit as deducible from the appendices. Those contain all the basic figures. The figures in the appendices come from the reports of the class 2 and class 3 records of the Commission, and from the class 1 roads the figures are from the Commission's publication of railway statistics.

Appendix C is a mathematical computation based on the other figures (Tr. 4236).

Mr. Towner: I do not think I have any objection to that.

(Said document received in evidence as Exhibit No. 489.)

The Witness: The list of roads in Appendix B in exhibit No. 489 are all the short lines which have filed reports with the Commission, and are class 2 and class 3 railroads (Tr. 4237). It is supposed to reflect all class 2 and class 3 railroads that filed reports with the Commission for that year, but does not cover switching roads.

L. R. MARTIN, having been previously called as a witness, was recalled and testified.

I have no statement with me of detention of cars on our line as between proprietary and non-proprietary interests. On trunk line cars on our rails and used by any industry, we pay the owning road one dollar a day. The average demurrage agreement applies to the industries (Tr. 4238). Our road is not owned by the Oliver Chilled Plow Works. The Oliver interests own the railroad, but no industry on the railroad owns any railroad stock. In 1927 we collected $831 demurrage, $605 on cars held in the yard beyond seven days. Sometimes we use railroad cars in plant operations, but it is subject to the demurrage. We release such cars as [fol. 864] quickly as possible to avoid an arbitrary charge (Tr. 4239) and demurrage is charged on them. $5 a day is the arbitrary demurrage charge beyond free time and the four debit days. Our road applies the National Demurrage Code, and has average agreements with its industries. The arbitrary charge is the charge assessed against the shippers. The road pays nothing but per diem. While the cars are held in the yard—the demurrage is charged against the industry using them, usually the Oliver Plow Works.

Mr. Barse: At page 994 of the Chicago hearing (Tr. 4240) a statement of the mileage in the Chicago Terminal district was requested. I have secured that.

(Said document received in evidence as Exhibit No. 490.)

Mr. Barse: The detail of the Standing Car capacity of the industrial yards, referred to by Mr. Fritch, was also requested and I have that.

(Said document received in evidence as Exhibit No. 491.) (Tr. 4241.)

F. J. Wasson, having been previously called as a witness, was recalled and testified as follows:

I am the same witness who testified at the Chicago hearing. I have a statement showing the switching reclaim allowance in effect on January 1, 1922, and the changes in the following five years.

(Said document received in evidence as Exhibit 492.)

The last change was on June 1, 1923 (Tr. 4242), except when the four industrial roads involved in the Chicago case were put on the modified Birmingham Southern basis. Since January 1, 1927 the Chicago West Pullman & Southern reclaim has been checked. With that exception the allowances on exhibit 492 are the present allowances. The allowance for that road, effective August 1, 1926, is 3.43 days (Tr. 4243). I have had a computation made of the cost of making reclaim statements on the Belt Railway [fol. 865] Company of Chicago, the Chicago, Burlington & Quincy and the Pennsylvania Railroad Company in the months of July, August and September, 1927. In July 1927 reclaims were presented on 82,815 cars at a total cost of $308.27, with an average cost per car of .3¢; in August, 1927 reclaim was made on 93,129 cars at a cost of $289.93, with an average cost per car of .3¢; in September 1927, reclaim was made on 88,011 cars at a cost of $274.50, with an average cost per car of .3¢. The total for the three months was 264,055 cars; total cost, $872.70; and average cost per car, .3¢ (Tr. 4244). Those figures represent the cost on the Belt Railroad at Chicago of making reclaims against all railroads in the Chicago district, and was the total cost to the Belt Railway of Chicago of handling reclaims for the entire business in those months against all roads in the Chicago district. It includes the expense of making the bills and collecting the money, but does not extend to the auditing

department (Tr. 4245). It represents the cost of making and presenting the reclaim bills and any correction that might be necessary. The clerk would go to the records already prepared to make out the bills and that cost is included in the figures. They represent what could have been dispensed with had the reclaim plan been out of effect and no other plan put in. Any other records would have had to be maintained in any case, even though reclaim had not been allowed (Tr. 4246).

W. H. GILES, having been previously called as a witness, was recalled and testified as follows:

I testified at the Chicago hearing in this case, and have prepared data for the Pennsylvania Railroad covering the cost of making reclaims in July, August and September, 1927. Reclaims in July covered 6,462 cars at a cost of $136.08 and a cost per car of 2.1 cents; reclaims for August covered 6,906 cars at a cost of $136.92 and a cost per car of 1.98 cents (Tr. 4247) reclaims in September covered 6,308 cars at a cost of $127.68, and an average cost of 2.02 cents. [fol. 866] The total cost was $400.68 on 19,676 cars, at a cost per car of 2.04 cents. These figures represent the cost per car of preparing reclaims which the Pennsylvania collected from connecting lines at Chicago. I do not know how much money the Pennsylvania system reclaimed from other railroads (Tr. 4248). The higher cost on the Pennsylvania than on the Belt is because the Belt handles a larger volume of cars, is strictly a switching line, and it is easier for it to prepare reclaim. We have three clerks at Chicago with total salaries of $420 per month, whose entire time is devoted to the preparation and presentation of reclaims covering cars switched by the Pennsylvania and the checking of reclaims on cars switched for the Pennsylvania Railroad by connections. To get the cost per car of reclaims, it was necessary to get the percent switched by the Pennsylvania as compared to the total number switched, and that per cent of $420 divided by the number of cars switched by the Pennsylvania represents the cost per car (Tr. 4249). If the Pennsylvania received such a bill from the Belt, the checking of it would use part of the time of

these three men I have described, so that in addition to the .3¢ per car cost to the Belt, the Belt may have had a fraction of the cost for receiving and checking the bill. That information was not requested. We were only asked for the cost of preparing and presenting reclaims, which is approximately 2¢ a car on all reclaims checked at Chicago. It costs the Pennsylvania more than it would cost the Belt because we have more complicated checking (Tr. 4250). A combined transaction where the Belt rendered the bill and we received it would cost .3¢ for them and .2¢ for us, or a total of two and a fraction. My figures apply where our company collected reclaims, and the checking of bills for reclaims against us, so whether the reclaim was presented by us or to us, our cost would approximate 2¢ per car. [fol. 867] It is practically the same operation. Chicago is a more complicated place than smaller stations, as it is more difficult to separate the cars (Tr. 4251). At a small place the operation is simple and does not involve any work at all to speak of. Generally, on our system each agent prepares and presents reclaims directly to the agent of connecting lines, who checks and certifies them. They are then forwarded to the car accounting officers, who settle the revenues (Tr. 4252).. It costs us about the same to check reclaims from another road as it costs us to present a reclaim against another road. There is some saving in the writing of initials and numbers, and there might be a little cost saved there.

E. F. Gaylord, having been previously called as a witness, was recalled and testified as follows (Tr. 4253):

I testified at the Chicago hearing and have prepared figures for the Chicago, Burlington & Quincy Railroad Company with respect to the cost of making reclaims in July, August and September, 1927. In July we made reclaims on 7,742 cars at a cost of $149.26, an average cost per car of 1.9 cents. In August, there were 8,025 cars at a cost of $178.35, or a cost per car of 2.2 cents. In September, there were 7,794 cars at a cost of $141.38, or a cost per car of 1.8 cents. The totals are 23,561 cars at a total cost of $468.99, a cost per car of 2 cents (Tr. 4254). At the bottom of page 1031 of the Chicago record, I stated that my figure of 5

cents or 8 cents included inter-terminal cars and all cars interchanged with the industrial railroads. I did not understand the question as the answer should have been "No," instead of "Yes." Exhibit 67 shows that the five cents per day paid by the industrial roads for the use of cars in 1924 was determined by dividing the number of days in inter-terminal service into the amount paid by industrial roads under the Birmingham Southern rule. Mr. [fol. 868] Wasson's statement at page 854 of the transcript was correct. Our reclaim costs include the total costs to the company of presenting reclaim statements to connecting line agents, including the necessary correspondence, if that was necessary (Tr. 4255); the transmittal to my office, the presentation to connecting lines and settlement. The cost to us of reclaim bills presented to us by other roads is not as much. It does not cost us as much to take the bill made by the other fellow and check it against our road as it does to prepare the statement in the first place. I think it would cost about a cent to check the other roads' statements as against two cents which it costs us to prepare them, present them and make settlement. I don't know how many cars we handle on the system in one month on which reclaims are made (Tr. 4256). We included in our costs the total cost of the head of the department under which these reclaims are presented. I included no part of my own salary (Tr. 4257).

(It was agreed between counsel that the Huddleston Committee formula did not include car hire expense as an item of expense in operating a railroad; that the formula was used to compute the allowances of these four industrial roads in Chicago, and that the car hire expenses were not included in it as items of transportation expense) (Tr. 4256-4259.)

R. L. Ruby was called as a witness and, being duly sworn, testified as follows (Tr. 4261):

I am superintendent of transportation of the Pacific lines of the Southern Pacific Company and have prepared answers to the questions propounded by the director in his letter of January 20, 1928. In 1927 our cars were held on foreign lines subject to reclaim as follows:

North Portland: Five empty stock cars, a maximum of 150 days for any one month. The reason is that under [fol. 869] local agreement with the Union Pacific, we allow reclaim on a maximum of five empty stock cars held at the stock yards within switching limits to meet demands for cars on short notice that could not otherwise be filled without delay. This is within the switching limits and comes within per diem rule 5.

Between Chico, California and Weso, Nevada in 1927, 14,767 cars were held and reclaim allowed in the amount of $34,097. The reason is that we allow the Sacramento Northern and Western Pacific to reclaim per diem on cars handled in bridge movement between Chico, California, and (Tr. 4262) Weso, Nevada, because loaded cars are short routed under contract at a fixed rate per car. A part of the consideration for this contract we absorb per diem to a maximum of four days on any one car; while on the Western Pacific and Sacramento Northern the contract referred to is the joint trackage agreement between the Western Pacific and the Southern and Central Pacific, under which the Western Pacific uses our track in one direction, and we use theirs in another through the State of Nevada.

In 1927 we allowed reclaims (Tr. 4263) on 6,834 empty cars for automobile loading, amounting to $218,721, the reclaims being allowed to the Alton, Chicago & Eastern Illinois, Chicago, Milwaukee & St. Paul, the Chicago & Northwestern, the Chicago, Rock Island & Pacific, the Illinois Central, the Kansas City Southern, the S. S. W. and the Wabash, and the cars were held at Chicago, Kansas City and East St. Louis. In February 1921, we made arrangements with some Chicago lines to hold our cars empty on their rails in Chicago for delivery to automobile producing roads for return loading with automobiles moving over our line (Tr. 4264). These cars were moving west to California where they were not needed, which was the reason we asked that they be held for westbound loading, but the holding roads refused to hold them, unless we would allow reclaim for the per diem while they were being held. Re- [fol. 870] claim is only allowed while the cars are actually held in storage, and none is allowed when they are moving or after they are released from storage tracks. The reclaim was only allowed while the cars were not in use by

the foreign lines and none is allowed on roads east of Chicago to which the cars are delivered for automobile loading. The plan has proved to be of such advantage in the handling and supply of cars to automobile producing roads that it has been continued. In order to participate in the automobile traffic, we have built 4,072 automobile cars, which are suitable for automobile transportation (Tr. 4265). It is a waste of transportation and car supplies to haul these cars empty from automobile producing territory in order to avoid per diem, but this was done prior to the maintenance of this practice. We were also unable to properly furnish cars suitable for automobile transportation westbound upon request therefor, and unless a supply of suitable cars is available at points where they are now held, there is a transportation waste in the return empty movement. This has occurred in the past when the cars were sent westward by foreign lines to avoid per diem charges. The car service rules require loading the car toward the home line in the absence of a special arrangement under which the holding lines hold the car on our request for us and subject to our order (Tr. 4266). The waste can only be avoided and the cars made available for use by holding them subject to orders of the car owner and allowing reclaim to the holding road. This practice is in the interest of efficient and prompt service and adequate car supply to the automobile industry without transportation waste and is necessary to enable us to meet demands on us by automobile producing roads to furnish cars for traffic over our line. This is evidenced by the fact that in 1927 we delivered [fol. 871] 6,834 of our cars to roads serving plants for return automobile loading. I would say that about 80 per cent of these cars are assembled under load by the lines under which they are held. They move east loaded and are assembled by our car service agent in the reservoir for car supplies. They are loaded with different classes of freight requiring large cars (Tr. 4267). The cars so held are available to all automobile originating roads, and all inquiries on the orders are placed with us and we fill them as received. I understand the question to refer to roads east of Chicago to which we deliver the cars on through orders. I have answered to the balance of the inquiry made in the form of an exhibit (Tr. 4268). The first sheet shows

our non-subscriber connections that make settlement at the per diem rate without reclaim or free time; the second sheet covers our non-subscriber connections that make settlement on a demurrage basis; and the third sheet covers our non-subscriber connections that make settlement in accordance with the Birmingham Southern rules.

(Said document received in evidence as Exhibit No. 493.) (Tr. 4269.)

The roads shown on the third sheet are all in Oregon, and those with a star in front of them are under a demurrage basis on order of the Oregon Railroad Commission. The double star refers to a decision of the I. C. C. All the roads on sheet 3 are on the same basis as the Valley & Siletz case. The parallel cases were given the same basis of car settlement. The roads on the second sheet are all industrially owned, except the Howard Terminal Railroad. They are on the usual demurrage basis with 48 hours free time (Tr. 4270). The industrially owned roads on sheet 2 are common carriers, and those on sheet 1 are not industrially owned. They are common carriers and were offered the per diem basis, which was agreeable to them. We [fol. 872] granted free time to the lines on the second page because they were industrially owned, and I presumed have come under the Birmingham Southern rule (Tr. 4271). The industrial roads are really treated the same as shippers under the demurrage tariff. The Bay Point & Clayton is nine miles long and performs a line haul movement on a local rate. The only reason I know of giving them free time is because they are industrially owned. They have been on the demurrage basis a number of years. The Valley & Siletz was formerly on a per diem basis, but this road had 48 hours free time prior to the Commission's decision (Tr. 4272). The only reason we gave the roads on sheet 2 demurrage basis with two days' free time is because they are industrially owned. Five roads on sheet 1 are also industrially owned, but are not on a demurrage basis with two days' free time, because in the first place they were offered per diem, and as it was satisfactory to them and to us, it remained in that status (Tr. 4273). We negotiated with these various roads. I could not say that we are now

willing to give the roads on sheet 1 48 hours free time, as it would result in considerable loss of compensation for the use of the equipment. I cannot say how we could justify that after giving free time to the other industrial roads. We have given the industrial roads on sheet 2 forty-eight hours free time (Tr. 4274), and I don't know how I could justify refusing to grant it to the non-industrial roads on sheet 1 (Tr. 4275). On the roads on sheet 2 we assessed demurrage after the 48 hours free time, and the roads on sheet 1 pay per diem without reclaim and without free time. The demurrage charges do not amount to much, and I do not think the roads are seriously concerned with the payments (Tr. 4276). The seven roads on sheet 2 accrued 31,240 car days in 1926, and would have paid on the per diem basis practically $31,240. We actually collected from [fol. 873] them $8,582 in demurrage, $1,299 assessed against the Minarets & Western Railroad accrued on 89 of our cars, which they held for 398 days without using them. We collected that demurrage, and it is included in the figure I gave (Tr. 4277). Had these roads been on a per diem basis, we would have secured over $20,000 in car hire settlement, more than we secured on the demurrage basis. I don't think any of the roads on sheet 1 perform a switching service. If they did, and were members of the per diem agreement, they would have received a reclaim. The only one which would receive a reclaim is the South San Francisco Belt. It is a belt line handling cars in switching movement, and we allow it three days' reclaim. Since it is a non-subscriber this is a departure from the rules. It is difficult to say why we departed in this instance. The matter was negotiated with our officers. The road would not agree to pay per diem without reclaim, and this arrangement resulted (Tr. 4278). I think that the railroads, subject to the approval of the Commission, should prescribe some uniform system of car hire (Tr. 4279). I think there should be a distinction between settlements of car hire by a subscriber and by a non-subscriber, as there should be an incentive for a railroad to belong to the A. R. A. and be a subscriber to its rules. It concerns the transportation business of the country (Tr. 4280). On my exhibit the Amader Central is 12 miles long and paid $4,179 per diem in 1926. The Arizona Southern is 20 miles long and

paid $3,016. The Camino, Placerville & Lake Tahoe is eight miles long and paid $5,000. The California, Shasta & Eastern is 16 miles long and paid nothing, as I don't think it was in operation in 1926. The Fresno Interurban is 18 miles long (Tr. 4281), and paid $61 until it was taken over by the Santa Fe in May, 1926. The Fresno Traction is 32 miles long and paid $245, being principally [fol. 874] a street car line. The Holton Interurban is 10 miles long and paid $2,343. The Inter-California is 52 miles long and paid $2,460. I don't know that it is a Southern Pacific subsidiary, but it acts like one (Tr. 4282). The Oregon-California Eastern is 40 miles long and paid $12,766. Recently, the road was acquired by the Southern Pacific, Northern Pacific and Great Northern. The Peninsula Railway is 77 miles long and paid $1,765. It is a Southern Pacific line. The Ray & Gila Valley is seven miles long and paid $2,079. I do not have the mileage on the Richmond Belt. It is simply a switching line (Tr. 4283). It is operated jointly under lease by the Southern Pacific and Santa Fe, each road performing switching service during alternate periods. Each road protects its own demurrage and has average agreements with shippers and absorbs its own per diem. The San Joaquin & Eastern is 56 miles long and paid $6,691. The Santa Maria Valley is 23 miles long and paid $3,628. It appeared in the case at San Francisco, and would like to have a more favorable per diem arrangement. These roads were satisfied until the time of this hearing. Since then, the Bay Point & Clayton has asked for 72 hours free time (Tr. 4284), and the Santa Maria Valley appeared at the San Francisco hearing. I think the Ray & Gila Valley is industrially owned, and would probably like to be relieved of car hire and be given two days' free time the same as the other industrial roads. I don't know who owns the road, but it is a mining road, extending from Ray Junction, connecting with the Arizona Eastern at Ray, Arizona. The Stockton, Terminal & Eastern is 53 miles long (Tr. 4285), and paid $2,997. The Sacramento Valley & Eastern is 15 miles long and paid $2,884. The San Francisco, Napa & Calistoga is 46 miles long and paid $3,170. The Tidewater & Southern is 65 miles long and paid $3,887. I think the Western Pacific controls it. It is down as an electric line. The Tuscon,

[fol. 875] Cornelia & Gila Bend is 43 miles long and paid $9,208 (Tr. 4286). The Visalia Electric is a subsidiary of the Southern Pacific, is 67 miles long and paid $3,182. The Ventura County Railroad is 6 miles long and paid $366. The Willamette Valley & Southern is 45 miles long and paid $80. The Yreka Railroad is 8 miles long and paid $1,402. The Yuma Valley Railroad is 19 miles long and paid $845 (Tr. 4287). The Yreka Railroad runs from Montague to a town called Yreka, and it is the only railroad there. It is not a mining railroad. Of the railroads on the second sheet, the Bay Point and Clayton accrued 2,356 car days in 1926, and paid $16 demurrage. The California Central had 5,876 car days and paid $856 demurrage (Tr. 4288). The Cement, Tolenas & Tidewater accrued 5,802 car days and paid nothing. The Minarets & Western accrued 9,276 car days and paid $5,904 in demurrage, including the $1,299 I referred to. The Mascot & Western accrued 753 car days and paid $675 in demurrage. The Oregon, Pacific & Eastern accrued 1,129 car days and paid $549 in demurrage. The California Central is 8 miles long; the Cement, Tolenas & Tidewater, 2 miles; the Mascot & Western, 15 miles (Tr. 4289); the Minarets & Western, 53 miles; and the Oregon, Pacific & Eastern, 22 miles. I do not have the figures on the Trona Railway. I think that latitude in the rules so as to provide for the holding of cars for prospective loading should be left in the hands of the A. R. A. I think there should be latitude in the car service rules, but on car hire, I think the railroads should work out a definite basis (Tr. 4290); although we find that latitude in those rules has been conducive to economy and efficient handling of cars. I mean the holding of cars until the load is available, as it saves an empty haul. My testimony covers only cars owned by the Pacific lines of the Southern Pacific.

[fol. 876] O. C. Castle was called as a witness and, being duly sworn, testified as follows (Tr. 4291):

I am superintendent of transportation of the Texas & New Orleans Railway Company, a Southern Pacific subsidiary in Texas and Louisiana, which operates all of the Southern Pacific subsidiaries in those states with the excep-

tion of the E. P. & S. W. of Texas, which is operated by the Southern Pacific. I have prepared an answer to the questions of Director Bartel (Tr. 4292). We have 10 non-subscriber connections which settle car hire on the basis of per diem without reclaim. We have two non-subscriber connections, the Christie & Eastern Railway Company, and the Red River & Gulf Railway Company, which pay per diem, but are allowed reclaim or free time on cars stored for prospective loading, the per diem being waived on the time delivered until the time placed for loading. Our connection with these roads is at LeCompte, Louisiana on a track owned by the Texas & Pacific Railway over which we have trackage rights. We have no storage or delivery tracks at the junction. The T. & P. will not permit the storage of cars at the junction, and to maintain a supply for loading on these short lines, we deliver box cars only to them direct, allowing reclaim on cars delivered in excess of immediate needs (Tr. 4293). To the Nacodoches & Southeastern we allow three days' reclaim on switch cars and cars loaded at Hayward. Under the tap line decision this road was allowed $1.50 a car from Hayward Junction to the interchange of our line, which is less than 2 miles. This is practically a switching service, so we have allowed a reclaim of actual time with a limit of three days. To the Shreveport, Houston & Gulf Railroad Company we allowed three days' free time with demurrage thereafter, this arrangement being in effect between that road and the T. & N. O. and St. Louis Southwestern Railroad of Texas (Tr. [fol. 877] 4294). I have prepared an exhibit covering the refund of per diem on our cars suitable for automobile loading stored at Chicago, St. Louis and Kansas City.

(Said document received in evidence as Exhibit No. 494.)

The exhibit gives in formation with respect to the road where the cars were held, the number and the amount per diem refunded, and is identical with respect to the arrangement, but covers cars not covered by Mr. Ruby's statement (Tr. 4295). The cars shown are Southern Pacific, Texas and New Orleans cars. The Exhibit shows that in 1927, 2,210 cars were held, and a total of $67,742 per diem was refunded. In response to general demand we have equipped ourselves recently with substantial ownership of automobile cars suitable for automobile loading. In addition to local

demand, we have been called upon to furnish such cars to lines in the automobile loading territory in Ohio, Indiana, Michigan and part of Wisconsin for the transportation of automobiles to points via our line. We do not directly connect with the lines reaching the automobile territory, and the best plan for the handling of cars seems to be (Tr. 4296) to hold the automobile cars at points on the lines of carriers where delivery may be made promptly to the automobile originating carriers. The carriers holding the cars for us cannot be expected to assume per diem on cars held in excess of their requirements, so for the last five or six years we have allowed such carriers reclaim at the per diem rate on cars so held. The reclaim is not allowed on time required for moving cars to or from the junction, as many cars are loaded to points within the territory reached by these lines, or at points in the east. If we had no storage arrangement, many of these cars would be returned to us empty under Car Service Rules and would be held by us empty until required by the origi- [fol. 878] nating road, when they would be sent east empty. This practice would benefit no one, but would be an unjustifiable waste through cross movement of empties. Under this arrangement cars are applied with reference to our own demands for this type of equipment. Our short line connections rarely require these cars (Tr. 4297), and the arrangement does not affect our ability to furnish such cars to short lines nor does the arrangement adversely affect other subscribers. I have prepared an exhibit in reply to the other questions of Director Bartel.

(Said document received in evidence as Exhibit No. 496.)

For convenience and economy we receive company rail from the Birmingham mills on flat cars, of which we normally have a surplus, while the originating carriers are principally equipped with gondolas. If the originating road supplied equipment for rail loading, it would use its gondolas, which would impose per diem charges on us, and increase the expense of unloading. The originating lines, therefore, take out empty flat cars for the shipments, and if there is a delay after the cars have been assembled (Tr. 4298), we allow reclaim to the holding road covering the period of delay, but the reclaim does not include the nor-

mal time of handling cars to and from the mill, nor the time required for loading. The next item covers waiver of per diem on stock cars delivered to the Texas-Mexican Railway for prospective loading. Considerable stock business originates on this road, a short trunk line connecting with us at Alice. For many years it has depended upon us to supply stock cars. The movement of stock is seasonal and the assembling of cars to protect heavy movement is necessary in the public interest. Our facilities in the vicinity of Alice are limited, and we cannot assemble large numbers of stock cars for delivery on short notice. As a reciprocal measure we have delivered cars in advance, allowing re-[fol. 879] claim in the period the cars are held for loading. The reclaim does not include the time of movement from and to the point of loading nor time of loading (Tr. 4299). The amount of the reclaim in 1927 is shown in the exhibit. The next item covers reclaim allowed on stock cars held by the Fort Worth Belt at Fort Worth, Texas, for prospective loading. The stock yards at Fort Worth are served by the Fort Worth Belt, and lines serving the yards find it desirable to protect shipments with their own equipment. To facilitate this, we allow the Fort Worth Belt a reclaim covering actual time of our system cars when held and applied for loading via our rails. That is item C on exhibit No. 495. We allow a reclaim on cars placed for prospective loading to the Christie & Eastern Railway Company and the Red River & Gulf Railway Company only (Tr. 4300), because we only reach the junction with those roads through trackage over the Texas & Pacific Railroad. In the absence of trackage upon which to keep empties available, we have sent a reasonable number of cars onto the tracks of those short lines with the understanding that when they are loaded they become subject to per diem. Our car distribution policy is to keep empty cars near points where they are likely to be needed, so we always have empty cars at or near the junctions with short lines, so they are as adequately served as though the cars were held on their rails (Tr. 4301). Our facilities are usually located conveniently to furnish cars to short lines. But with the two exceptions I have noted our facilities do not permit us to store cars as near the short line as if we had our own facilities there. During the time a car is held,

we do not charge per diem to the short lines. We allow an industry on our rails 48 hours free time for loading or unloading. We deliver cars to a short line for the purpose of delivering a load, or receiving a load (Tr. 4302). I am not [fol. 880] competent to say why that road must pay per diem without free time, when a shipper is allowed 48 hours free time for loading, but generally the character of the service is different and the distinction lies in the fact that one is a railroad and the other is a shipper. If a shipper owned a railroad a couple of miles long and did its own switching, it would make no difference if it was a railroad any more than it would with a shipper who brought his stuff in a wagon (Tr. 4303). The Nacodoches & Southeastern Railroad is an industrial road owned by a lumber industry, and is not a subscriber to the per diem code. The only bar to allowing them a reclaim is that they are not members, as the character of their service is strictly switching. We allowed it the reclaim and have jumped the bar, because we thought it was fair to allow them reclaim on strictly switching basis, even though they are a non-subscriber. We have no other railroads in the same situation, but if we had I think they would be entitled to same. We have no connecting non-subscribers who handle business on a switching basis (Tr. 4304). Our reclaim arrangement would tend to increase the tap line allowance of this road except that when the decision was made, the free time allowance was in effect. Ordinarily, we are governed in our per diem settlements with non-subscribers by the theory that they are railroads and should pay for cars used by them, as though they were member lines. In this particular case, the reclaim is allowed because of the character of the business on which the road would be allowed a reclaim if it subscribed to the per diem rules. I do not think the per diem code should be changed to allow reclaim to non-members on switching service (Tr. 4305). That matter has been considered pretty carefully by committees. I cannot speak for all roads, but if a short line is handling strictly switching business on a switching charge, which [fol. 881] wouldn't pay the per diem rate, much less compensation, I would feel like extending the same arrangement to it that has been extended to this road. I don't think it is necessary to amend the per diem code in that respect. We have not felt the need of any clubs in our

territory (Tr. 4306). I regard the arrangement as a departure from the per diem rules, which forbid it. The Shreveport, Houston & Gulf Railroad is not a subscriber and I don't know that there is any reason for allowing it free time. The arrangement antedates the provisions of Rule 6 B. It is one of a number of railroads that have not been placed under the rule. I am testifying as a Southern Pacific representative and I am not authorized to speak for the (Tr. 4307) A. R. A. I know that departures from the rules exist, but I cannot give the reason for it. My road is a member of the A. R. A., and only departs from the code with respect to short lines in four cases. In two of the cases involved, the storage arrangement, I do not believe, is strictly a departure, as it is a constructive placement of our cars on the lines of another carrier, because of disabilities which make it impossible to meet their requirements, and benefits the shippers and the public. In the case of the reclaim on switching, I think it is a departure, and is only justified by the fact that the railroad handling a car in switching service gets $1.50 (Tr. 4308), under circumstances which between subscribers would justify a reclaim. When the per diem rules were adopted, there was the question of how to overcome switching service. Mileage was not paid switching railroads, and unless switching railroads were raised, the switching roads could not pay per diem. That is why we had reclaim. In this case the road gets $1.50 for handling the car and switching service, and we thought the reclaim was justifiable. The Shreve-
[fol. 882] port, Houston & Gulf is an industrially owned road, and probably should pay us per diem as the other roads do. Several industrially owned roads pay us per diem, and I do not think the treatment we are giving the Shreveport, Houston & Gulf is treatment we should give a railroad (Tr. 4309). I think we are probably treating everybody alike now. The Woodworth and Louisiana Central is industrially owned, but is practically abandoned now. The East Texas & Gulf, the Gulf and Sabine River, the Moscow, Canton & St. Augustine are industrially owned. I do not think each railroad should be permitted to make any arrangements it sees fit with short line connections (Tr. 4310). We are doing that now in many cases, but if it was possible to make uniform rules, I think it would

be desirable, as individual arrangements would probably lead to discrimination between the short lines themselves. I think Rule 6 should be approved by the Commission, as it now stands, but am not so certain about Rule 5. If a plan could be worked out which would preserve the integrity of the per diem agreement without what has been referred to as a "Club", I think the allowance of reclaim on strictly switching business would not be unreasonable to a non-member short line. That involves a lot of considerations which go into the integrity of the per diem rules agreement (Tr. 4311), and I hesitate to express an opinion that might be construed as favoring anything which might result in withdrawals from the agreement, as some such arrangement is necessary if transportation is to continue and settlement for cars is to be on a definite basis. We allow no reclaim on automobile cars except to roads which reach junctions with originating roads. Such reclaim is not allowed the loading road. The St. Louis-Southwestern of Texas connects with the Shreveport, Houston and Gulf, and most of the other short lines have other connections. I think the Cairo Northern, the East Texas & Gulf and the Arkansas Harbor Terminal are the only roads not having [fol. 883] other connections. The arrangement with the Shreveport, Houston & Gulf I think is the same on both roads (Tr. 4312). I would hesitate to enter into a discussion of the advisability of abolishing reclaim as between railroads and increasing switching allowances to cover car hire or placing car hire in a division of the rates (Tr. 4313). I doubt if any plan could be worked out which would be better than the reclaim arrangement, cumbersome and imperfect as it is, and give justice to all interests. If the rules are followed, I think the reclaim plan comes as near to the intent of the rule, which was to make the switching line whole and not give it profit as any I have seen suggested (Tr. 4314). I think a rule which would leave the matter of settlements between subscribers and non-subscribers to themselves subject to some limitation as to the number of days which should be allowed would be distinctly undesirable. It would throw the question open to barter between trunk lines and short lines, and I think would be a bad thing for the short lines. One that had only one connection would be at a disadvantage as compared to one

that had more than one connection (Tr. 4315). In effect, that is what is being done now in many instances, and formerly it was much more marked than it is now. If the rule were changed as suggested, the only difference in the old system would be that there would be a limit to the amount of free time, which a railroad having two connections might get. I don't know whether or not there is anything that prevents them from exercising these tactics in connection with divisions (Tr. 4316). The Nacodoches & Southeastern is allowed a switching credit based upon actual time with a maximum of three days (Tr. 4317). I have heard that the reclaim rule penalizes car efficiency by a reduction of reclaim, due to efficient handling, but I don't believe it is serious if a man has a reclaim of four days and by handling his cars in three days can make a dollar. He doesn't worry much about the effect on his arbitrary when [fol. 884] the next check is made. Also, a road which handles any amount of switching could not afford to congest its terminals to pile up a fictitious average which might benefit it in a subsequent check (Tr. 4318). The rule also leaves to individual railroads in any territory the right to adjust reclaim on other methods than by check, and many railroads have adopted plans practically in agreement with the maximum. Under those rules that objection would hardly hold good. In many points we have the actual plan of reclaim with a maximum of five days. I don't know of any point on our line where all the rates are absorbed. The absorptions are generally covered by tariffs (Tr. 4319). In some cases charges are borne by shippers or consignees, but even where switching charges are absorbed, I think there would be obstacles to include the per diem in the switching charge. One objection would be with respect to private cars, which are on a mileage basis. Many railroad cars are also on a mileage basis, and that would complicate any such proposed plan more than the present reclaim system, which I think is about the most practical plan that has been brought forward. The matter of our absorption is subject to jurisdiction of State Commissions, on Intrastate traffic, and the Interstate Commerce Commission on interstate traffic. Nothing is collected from our numerous non-subscribers on private line cars (Tr. 4320). I think the roads having them settle direct with the owners.

These short lines with which we connect have practically no interchangeable cars. If they did have cars, we would settle for them on the mileage basis. Under the rule, we would not give them per diem. I don't know the reason for that rule, but think that it was an incentive to induce railroads to become parties to the per diem agreement, so that if they wanted per diem they should come under the rules (Tr. 4321). The Brimstone Railroad & Canal Company owned some gondola cars which it devoted exclusively [fol. 885] to the hauling of sulphur from a mine in Louisiana to Sabine. While they were on our line, we paid for them on a mileage basis, which gave them a higher rate than the per diem rate in effect at that time. They were handled in train loads from the mines to the port and returned empty to the mines. That was an exceptional case (Tr. 4322) as that line is not a typical short line railroad. It is hard to justify a refusal to pay the same car hire allowance to a non-member that is paid to a member, but I think that the necessity of maintaining a uniform method of settlement for cars is of sufficient importance to justify such measures as may be necessary to keep the principal railroads of the country in the agreement. Nothing prevents a carrier from becoming a party to the Per Diem Rules agreement. The expense is little. If it were a closed corporation and a short line could not get in, the situation would be different, but it seems to me that that slight amount of incentive might be permitted in the interest of retaining those roads (Tr. 4323). If we had two short line connections, one a subscriber and one a non-subscriber, we would pay per diem on the cars of the subscriber, and mileage on the cars of the non-subscriber. The cases would be treated differently. I may not know the law, but I don't see how that would be a discrimination as between those carriers (Tr. 4324). The mileage on the car of the non-subscriber is paid under the rule of the A. R. A. (Tr. 4325). My answer to the question was as to what we would do, and I said we would do it because it was a rule of the A. R. A. I don't know what other carriers would do. I don't know how we would find out the mileage a non-subscriber is entitled to. I don't think that on our line we carry the mileage rates which we allow in the tariff. The mileage is settled on the basis of rates established in the rules of the

Association, and I don't think they are subject to tariff (Tr. 4326). The mileage rates in Jones' tariff are another [fol. 886] matter and involve shippers. The mileage rates we pay on cars of non-subscribers are in the rules of the A. R. A., but I am not testifying for that Association. I think the Association has either a resolution or a rule recommending the payment of the same mileage rates to non-subscribers as are paid to private car owners (Tr. 4327). I think there are one or two cases in our territory where there has been a question as to whether the revenue of a switching road for switching service was a division or a switching rate, but that is a tariff matter (Tr. 4328) upon which I am not qualified to pass. I don't know as to the practicability of ascertaining the costs of the switching roads over a period of time, including the per diem costs and mileage costs, and arrive at a figure which would represent the approximate car hire expense which could be included in the tariff charge. The computation might be practical, but the application to be made of it would be a question when you consider the difference in the character of cars handled in switching service. I think it would be rather involved. Rule 18 of the Per Diem Rules provides that they shall not apply to private cars or to cars of non-subscribers (Tr. 4329). A resolution adopted by the Association November, 1916 recommends the payment by subscriber roads to non-subscribers for the use of the cars of non-subscribers the same mileage rates as are paid for the use of cars of private ownership of similar classes. Those mileage rates, I think, are the ones in Jones' tariff. On automobile cars, which are stored, a per diem is paid in accordance with Rule 1. A statement is prepared at the end of the month showing the cars held to our account, and that is presented to us in the form of a reclaim, or bill (Tr. 4330). I think those situations are not specifically covered by the rules and are not specifically prohibited. Up to the time of this hearing, it never occurred to me that there was anything in the rules which prevented members from [fol. 887] making such arrangements as might be efficient or economical. That has occurred to some of those participating in the hearing. We keep records which will show the amount that we pay out by months or years in the form of reclaims, and the amounts which we collect as reclaims

(Tr. 4331). I can procure a statement showing the amount of switching reclaims which we paid and the amount that we received. I think our records would also show the number of cars involved, and the number of places involved is procurable (Tr. 4332).

Examiner Rice: This is a request for a statement showing reclaims on terminal switching for the calendar year 1927.

Mr. Towner will take care of the distribution and it will be filed as a statement (Tr. 4333).

The Witness: I will also furnish a statement showing the mileage and amount of car hire involved in the year of 1927 of the short roads referred to by me (Tr. 4334). I said that up to the time of this hearing it had not occurred to me that we could not make local agreements between subscribers under the per diem rules. What I should have said was that it had not occurred to me that there is anything in the per diem rules prohibiting agreements between members which are in the interest of economy and efficiency. I do not think the rules should be changed to make such local agreements possible, but I think there is quite a difference between agreements between subscribers and agreements between nonsubscribers. An agreement with the subscriber would not be proper unless in the interest of efficiency and economy (Tr. 4335). There are some cases of nonsubscribers where an agreement would possibly lay the way open to discrimination, for or against some public interest. I would like to have a specific statement of facts before I could say that there is no reason why the Southern Pacific [fol. 888] should not have the power to regulate a situation with a stub-end connecting short line (Tr. 4336). I have said that the rules should not be so inelastic that the subscriber roads cannot agree on matters that are in the interest of efficiency and economy. There are different kinds of short lines. With some, I don't think it would be in the interests of efficiency or economy to throw it wide open; nor did I say that other parties should make an agreement for me and not leave me any discretion, as I don't want anybody to force me to do anything. I don't think it is in the interest of efficiency and economy to have relations so flexible that roads may be influenced by various reasons to agree to some-

thing that would be against efficiency in car handling, or that might run close to an illegal discrimination (Tr. 4337). I think the Southern Pacific is competent to handle its own affairs, but no railroad can stand on its own bottom today in car-handling. Cars circulate freely in carrying interline freight, and you must have a system of rules to maintain. I think the Christie & Eastern and the Red River Gulf are owned by proprietary interests. I think that the storing of cars free of per diem or of reclaim is a reasonable arrangement, and that the rules are not elastic enough to permit it, and the only alternative is to deviate from the rule. We have apparently had the power to do that (Tr. 4338). In the two cases where this was done, I said that the cars were constructively in our possession. In that sense the practice would not be a departure. I would hesitate to say that the rules ought to be made less elastic than they are now. They constitute a contract between member lines and there is a mutuality of interest (Tr. 4339), but where two parties desire to make an arrangement, that seems to be permitted. In the two cases of non-member lines that I referred to [fol. 889] there was a physical condition which made it necessary that we make an arrangement for a constructive placement of cars, and I don't know that Rule 6 B prevents it. I would regret to see any rule prevent us from taking care of a member under those circumstances. I am not familiar with the origin of the arrangement of free time allowed the Shreveport, Houston & Gulf. It was in effect before the adoption of Rule 6 B, and I am not in a position to say what brought it about, as I was not in charge of the work at that time (Tr. 4340). The arrangement calls for straight demurrage after two days. I am fairly familiar in a general way with the local conditions of the short lines with which we connect. I don't recall saying that conditions varied widely on the different roads. What I meant was that there are different varieties of short lines, and that it is hard to say that it would be a good thing to have the rules permit of independent negotiations with all characters of short lines. I don't know about physical conditions, and did not say they varied, although they probably do on all railroads more or less (Tr. 4341). I would not be afraid to go up against a stub-end feeder line for a car hire arrangement, but it is a bad way to settle a question of car hire which ought to be settled on the basis of value of serv-

ice. I think a railroad is either a railroad or a shipper. If it is a railroad, it is presumed to get compensation for its transportation service, out of which it will provide for the expense of operation. One of the essential expenses of operation is the provision of cars. If a railroad owns cars, it has provided for that by an investment, and if it doesn't own cars, it can provide for it by using equipment that other people have invested in and paying an adequate rate on it. In some instances, I think a mileage allowance to a non-subscriber for its cars is adequate, and in some cases is probably more than compensatory (Tr. 4342). I mean that [fol. 890] it is not the job of the car owner to figure out where the man who rents his property is going to get money to pay for it.

Mr. Bell: Is this not an academic question to which these questions are being addressed? It is a matter involving a Constitutional provision. You could not take anybody's property without just compensation under the Fifth Amendment, and that applies to a short line, as well as anybody else (Tr. 4343).

The Witness: My information is that the Nacogdoches & Southeastern Railroad gets a $1.50 a car. It has been some years since I read the Tap Line Decision, but the compensation to some tap lines were restricted to some certain amounts per car per hundred pounds (Tr. 4344). My best information is that it was a car rate of $1.50, and there were some tap lines which had a scale which ranged according to mileages. I don't know that those scales were fixed without making provisions for car hire. This particular line was not paying car hire when the allowance was made, and I don't see that we made an allowance over and above what the Commission had granted. When we negotiated with this line they brought forward a switching movement for which they got $1.50 per car, and for which it would be unjust to expect them to pay per diem. I don't think the per diem settlement was gone into in the tap line case (Tr. 4345). The statement as to the tap lines has nothing to do with this $1.50, as it is strictly a switching reclaim (Tr. 4346). My position with this road was that since it handles switching service and would be eligible to a switching reclaim if it were a member, it was fair to give them a switching reclaim. If

it was getting $1.50 for a ten-mile haul, it would be reasonable to impose a straight per diem. My understanding of the tap line investigation was that it arose because of a difference in treatment among the trunk lines and short [fol. 891] lines, which produced prejudice and discrimination in favor of some industries. I think all rules should be reasonable (Tr. 4347). I don't think any rules should be arbitrary if they undertake to cover the transportation system of the United States. As between the roads comprising the Southern Pacific System, car hire is settled on a mileage basis. There are just two operating companies, and the cars are considered at home on any part of the system lines. When they are standing still, no payment is made, but when they are moving they are settled for on a mileage rate, the mileage being secured from the wheelage reports (Tr. 4348). As between our companies we maintain car balances about the same as between divisions of a system. There is no attempt to maintain cars on each road equal to the ownership. The cars are not moved from one system to another, except to supply the demands of traffic (Tr. 4349).

GEORGE A. MAIN was called as a witness and, being duly sworn, testified as follows:

I am General Traffic Manager of the Cadillac Motor Car Company, and appear for the automobile manufacturers who are members of the National Automobile Chamber of Commerce. We are not primarily interested in per diem between railroads, but we understand that the practice of maintaining automobile equipment in close proximity to manufacturing plants is under consideration. The practice now in effect, which was established in 1921 (Tr. 4350), has enabled carriers to effect great economies in the handling of equipment and has relieved a formerly expensive situation for shippers and carriers alike. A discontinuance of the present practice, which has worked out so satisfactorily, will result, we fear, in creating an unbalanced condition in the matter of supplying suitable equipment in the hand- [fol. 892] ling of our traffic. Our reason for appearing is to bring this feature to the Commission's attention, as we

feel any interruption of this practice would result to our disadvantage in the distribution of our product. So far as I know, the railroads own equipment on these roads at junction points for other industries (Tr. 4351).

A. L. BERGSELD was called as a witness and, being duly sworn, testified as follows:

I am Superintendent of Transportation of the Great Northern Railway. I have prepared answers to the questions in Director Bartel's letter of January 20 (Tr. 4352). In the opinion of the Great Northern, the holding of automobile equipment with per diem reclaim makes for economy for everybody. It minimizes empty car mileage and saves the expense in returning the cars to the owner to save per diem. The advantage accrues to the owners and to the lines with whom we have no such arrangement, for the reason that surplus Great Northern cars of this type are turned over to the holding line at Chicago and saves the latter and former the empty haul. The arrangement is beneficial to the automobile industry because requirements are promptly filled, and it cannot reasonably be expected that the originating lines should own cars equal to 100% of the requirements. Other lines have supplied themselves with cars of this type to the extent that it was felt necessary to represent a fair proportion of the requirements. This is reasonable in view of the vast territory to which the shipments go and the revenue enjoyed by the roads (Tr. 4353). We had arrangements in effect with the Chicago Great Western Railway at Chicago and with the Chicago Northwestern Railway at Kenosha. An arrangement with the Chicago Northwestern at Chicago was cancelled in May, 1927. The Great Northern does not reach Chicago. The Great Western holds [fol. 893] the cars at Chicago and other Chicago lines as they receive or make empty the Great Northern automobile cars and turn them over to the Great Western. That saves the haul back to us. We also had an arrangement with the Soo Line at Gladstone, the arrangement covering automobiles which were routed over our line (Tr. 4354). A few cars were also held by the Grand Trunk Western at Pontiac and Lansing in 1927. These were special arrangements and did not amount to much and were only arranged for special

conditions. We had an arrangement for holding cars at Kenosha where automobiles were manufactured, but they were held not only for Kenosha shipments but for distribution throughout the territory as there are other plants at Racine. In 1927, 2,750 Great Northern cars were held by the subscribers named, and the per diem refunded was $34,885 (Tr. 4355). The cars were held subject to call for any line or any shipper and were held by the intermediate roads at our request, for our account, and subject to our order under the arrangement we made with them. We allow eight days on all cars except stock cars (Tr. 4356), subject to a maximum of eight days on any one car. We allow three days free time on one-way loads, and five days free time on two-way loads on the Hill City Railway with which we connect at Swan River, Minnesota.

Thereafter, we charge them a dollar per day, the time starting at 7 a. m. after placement on interchange tracks. This arrangement was made in 1918, and was put in a formal contract in January, 1922; the contract providing not only for car hire but for operating arrangements. That road uses our terminals, yards and tracks at Swan River (Tr. 4357), and the contract was primarily to cover the operating arrangement. The car hire features were incorporated in it. The contract provides for payment to us on a certain basis for the use of our facilities. We also allow four days free time on one-way loads, and six days' free time on two-
[fol. 894] way loads to the Longview, Portland & Northern Railway, with which we connect at Longview Junction and Vader, Washington. It is a letter agreement made in May, 1926, but the arrangement has been in effect ever since the railroad was built. The free time allowance was made as a result of negotiations. We tried to get the road to pay a straight per diem, but it refused. We negotiated with them and made an arrangement agreeable to both parties. We dickered on it. All these roads are non-subscribers (Tr. 4358). In these cases we have given free time to non-subscriber connections, which refused to pay per diem and dickered with it. We would do that in every case, as there was nothing else to do, since they refused to pay per diem. We wanted to come to an agreement and arrive at some settlement. The Longview Railroad is controlled by large lumber interests, and connects with other trunk lines. I cannot say that that had any influence in giving them an

allowance, as these negotiations were in progress when I was not in the service. I don't know about this road testifying at Portland. It is owned by the Long-Bell Lumber interests (Tr. 4359). We allow a maximum of four days free time to the Newaukum Valley Railroad, with which we connect at Napavine, Washington. It is ten miles and a half long. Time is figured from the first 7 a. m. after delivery, and a dollar a day is paid after free time. The free time is per car unit. We allow four days free time on one-way loads, and six days free time on two-way loads, and one dollar a day thereafter to the Pacific Northwest Traction Company, an electric line in Washington with which we connect at five points in Washington. We allow a maximum of four days free time on any one car, with a dollar a day thereafter to the Washington Western Railway, a line 10.7 miles long, with which we connect at Woodruff, Washington. We allow them actual time of four days as a maximum [fol. 895] (Tr. 4360). If they take only three days, we allow them only three. We allow three days free time on one-way loads, and six days free time on two-way loads, and thereafter one dollar a day per diem to the Waterville Railway, a line five miles long, with which we connect at Douglas, Washington. Time starts at 7 a. m. after cars are placed on the interchange tracks. The foregoing lines are the non-subscribers with which we have a per diem arrangement with free time. We have some other non-subscribers on a demurrage basis. The Tacoma Municipal Railway, operated by the City of Tacoma, Washington, is an electric belt line. We have trackage rights over the belt line, although it does the switching. It does the physical work of moving the cars to and from industries (Tr. 4361), but has no dealings with the shippers or receivers of the freight. This contract provides for a stated charge per car, and we make our demurrage settlements direct. It acts merely as our agent. We also connect with the Cowlitz, Chehalis and Cascade Railway, a line 21.7 miles long, which connects at Chehalis, Washington. We were unable to make any agreements with the owners of this road, which is a short line common carrier, so we assessed demurrage direct against the receivers and shippers of freight on that line. I can give no reason for these departures, except that we tried to come to some agreement with the short lines and did the best we could. All these lines had free time under Fed-

eral Control, and they wanted it (Tr. 4362). Strictly speaking, the per diem rules do not permit these arrangements, but the situation confronted us and we made arrangements with the short line connections, or anywhere else, if a short line makes a big enough kick, they get something that the other fellow who does not kick does not. The rules may be alright, but the departure is not. These are departures from the rules. The rule only authorizes us to make local agreements with subscriber lines. We connect with the Marysville & Arlington Railroad at Cox Spur, Washington [fol. 896] (Tr. 4363). We made a contract with them in 1909, providing for the interchange of cars subject to the rules of the Pacific Northwest Car Service Association, and it has been under demurrage ever since. We also connect with the Minneapolis, Anoka & Cuyuna Range Railway at Anoka, Minnesota and through the Soo Line at Minneapolis Junction. The road is 19.6 miles long. The interchange at Minneapolis through the Soo Line is in accordance with the per diem rules. At Anoka the short line is our agent to place cars at a mill located there. The mill is not on our line, but the short line does the work for it. We do the accounting and assess the demurrage, and it is our agent for switching to this industry. I don't know if they publish a tariff, but they get a switching charge. I think we publish a tariff, but I am not sure of it. We handle all the other industries at Anoka (Tr. 4364). We have no rights over the road to this mill, and I don't know how we publish a charge to a point we don't reach, but that is the arrangement. The cars are not interchanged, but are kept in our account. We allow three days free time on one-way loads and five days on two-way loads on cars, with a straight demurrage thereafter to the Montana Western Railway with which we connect at Conrad, Montana. The road is 20 miles long, and the arrangements were made in 1915. The Seattle Municipal Railway, an electric line with which we connect at Seattle, Washington, and which serves a few industries, pays us nothing for car hire, but assesses and collects demurrage at the industries and turns it over to us (Tr. 4365). We handle car hire matters under straight demurrage rules with the Minneapolis and Rainy River Railway, a line 72 miles long with which we connect at Dear River, Minnesota. I think it is industrially owned. The agreement is verbal and dates back to 1918. We also connect with the Minne-

apolis Eastern Railway, a switching road five miles long in Minneapolis, and the Minneapolis Railway Transfer, of about the same capacity, at Minneapolis, and on those roads [fol. 897] we get nothing. We have no non-subscribers with whom we do not have some special arrangement (Tr. 4366).

Cross-examination:

We charge some of our non-subscribers per diem, but they all have free time. Others have free time and demurrage. They all have a special arrangement by which I mean a departure from the per diem rules. I negotiated the Hill City arrangement, and, as a member of the Northwest Association of Transportation and Car Accounting Officers, I handled the St. Paul Bridge & Terminal; the Washington Western; the Montana Western; and the Minneapolis, Rainy River Railway (Tr. 4367). We get nothing, as I said, from the Minneapolis Eastern and Minneapolis Railway Transfer. We made the best arrangement we could with the Washington Western. We tried to get it to pay straight per diem under the rules, but they declined and insisted upon free time, so that a maximum of four days finally developed. That road also connects with the Milwaukee and the Northern Pacific and has similar arrangements with them. The Montana Western, Minneapolis and Rainy River (Tr. 4368), and Hill City lines have no other connections. I don't know what is wrong with our special arrangements, except that they are departures from the per diem rules. I don't see how I can criticise them, because we agreed to them (Tr. 4369). I do not know what basis of division these roads have. So far as I know, there has been no change in rates as a result of these departures. We have some short line connections which are subscribers, if we call the B. A. & P. a short line. My testimony has only covered short line non-subscriber connections, but we have some connections which are subscribers (Tr. 4370). We make no exceptions in the case of subscribers. They voluntarily subscribe to the rules and have lived up to them. The individual arrangements we have are by voluntary agreement between the Great Northern and those lines. We met and discussed the matter. I will furnish a statement showing what each of the roads I have named would have paid under [fol. 898] straight per diem in 1927, and the amount it actually did pay, also the length of the line (Tr. 4371).

E. G. TROBAUGH was called as a witness and, being duly sworn, testified as follows:

I am car accountant of the Missouri Pacific Railroad (Tr. 4372), and have prepared a statement in answer to the inquiries of the Director in his letter of January 20 to Mr. Towner, including a description of car supply for automobiles. We have arrangements with certain roads, subscribers to the Per Diem Rules Agreement, which serve directly or indirectly the automobile territory, whereby those roads store equipment for automobile loading to anticipate and take care of orders for them for the transportation of automobiles to points on or via our line. We have such arrangements with the Alton, C. & E. I., Wabash, Grand Trunk Western, L. & N. R. R. Co., N. Y. C. & St. L. R. R. Co., Pere Marquette Ry., C. & N. W., and C. M. St. P. & P. at 12 points in Illinois, Indiana and Michigan (Tr. 4373). The Terminal Railroad Association of St. Louis also stores our Missouri Pacific cars, as well as foreign cars for us. In 1927, 4,586 automobile cars were held for our account by the roads named, and per diem waived in the amount of $61,978. We think this partcice is economical to everybody as it minimizes empty car mileage and avoids the operating expense of returning the cars to the owners under Car Service Rules in order to avoid per diem expense to the roads on which the cars are located. It is also economical because it reduces the number of cars necessary for automobile transportation, and is beneficial because it permits prompt furnishing of sufficient cars to take care of the business of automobile loading (Tr. 4374). We also have some other arrangements with subscriber and non-subscriber connections. The Missouri-Illinois Railroad Company is a [fol. 899] subscriber, and we waive per diem on Missouri Pacific coal cars held by it for coal loading. We do this, because of limited track facilities at our connection with this road. Orders for coal cars are placed on short notice, and we therefore have a supply immediately available to care of orders so as to permit the Missouri Pacific to cipate in the business. Due to a disturbance in the industry from May to October last year, we waived per diem on 250 cars of coal at that time. The cars were held on the other railroad, and I don't know whether or not they were on a mine siding (Tr. 4375). The Missouri-

Illinois held 1,089 cars with a per diem waiver of $18,323. I do not know the capacity of the mines on that road which has connections with other railroads. That road rates its own mines, but I don't know where they are. The Missouri & Illinois runs from Clinton, Illinois, I think, to St. Genevieve, Missouri, but I do not know the physical layout (Tr. 4376). It has mines on its line. The figures I am giving are for 1927. The Dardanelle & Russellville is a subscriber, and on that road we waive per diem to a maximum of three days on each Missouri-Pacific coal car; and, in addition, waive per diem with no maximum on cars under load with no-bill coal. This arrangement is made because of limited track facilities at point of connection, and of the necessity for prompt supplying of cars. In 1927, the arrangement involved 851 cars with a per diem waiver of $5,200. The Joplin & Pittsburgh Railroad is a subscriber and we allowed actual per diem with a maximum of three days on all Missouri Pacific coal cars, and actual per diem with no maximum on Missouri Pacific coal cars under load with no-bill coal that are subsequently delivered to us for movement. The arrangement is due to limited track facilities at the connection point, prohibiting us from holding a supply of cars on our own rails. That road has agreed to hold [fol. 900] the cars free of per diem, which enables them to furnish the cars promptly (Tr. 4377). In 1927 the arrangement involved 6,915 cars with a per diem waiver of $19,512. We entered into the arrangement, and think it is economical, because if we don't get the coal busines when it is coming, we lose it. In a measure that makes a traffic proposition of it, as we think cars are no good if we don't get traffic for them (Tr. 4378). On cars turned over to short lines, they are turned over for traffic purposes. The Kansas City, Mexico & Orient Railway Company is a subscriber and we have with it a temporary arrangement during the grain season, and allow it a reclaim of actual per diem paid on our grain cars stored for grain loading. The arrangement was made because of limited track facilities preventing us from holding the cars ourselves and to meet competition. In 1927, the arrangement involved 189 cars with a reclaim allowance of $924.

The Wichita Northwestern Railway is a subscriber, but we have a temporary arrangement with it during the grain

season allowing reclaim on the basis of actual time on grain cars of our ownership stored for grain loading. The arrangement was due to limited track facilities preventing us from holding the cars and to meet competition. In 1927, the arrangement involved 178 cars with a per diem reclaim allowance of $3,192.

The Kansas, Oklahoma & Gulf Railway Company is a subscriber and we have with it a temporary arrangement during the potato season providing for a per diem reclaim of actual time on our box cars stored for potato loading. The arrangement was made to meet competition, and in 1927 involved 121 cars with a reclaim of $718 (Tr. 4379).

The Midland Valley Railroad Company is a subscriber and with it we have a temporary arrangement during the [fol. 901] potato and stock season, allowing for a per diem reclaim of actual time on our stock cars stored for that loading. We made this arrangement so that cars would be immediately available to protect the movement of these two commodities and meet competition, as we were unable to store cars on our own tracks by reason of limited track facilities at point of connection. In 1927 the arrangement involved 698 cars with a reclaim allowance of $4,711. The Missouri Southern Railroad Company is a subscriber, and to it we allow actual per diem with a maximum of three days on our cars. The arrangement is made so as to have cars available for loading because of limited train service on the Missouri-Southern and lack of track facilities on our line at the connection (Tr. 4380). In 1927 the arrangement involved 580 cars and a per diem waiver of $2,615. That is all of the arrangements with the subscribers (Tr. 4380). These roads have signed the per diem rules agreement, but also have a special voluntary agreement with the Missouri Pacific different from the general rule. The Terminal Railroad Association of St. Louis is a subscriber and with it we only give a switching reclaim allowance on the service measure plan. We have an arrangement whereby it holds our empty automobile cars with a reclaim of actual time, the cars being held for loading within the switching limits by the Moon Motor Car Company. The cars are held by that one company. I don't know whether the terminal assesses demurrage on the cars while held. The cars are not held on orders of the motor company (Tr. 4381). We put

the cars over there and the terminal stores them so that we can get some business which we could not otherwise get. I don't know that the terminal would accommodate any shipper who might want to order any cars. As a general proposition, we would not hold the cars at a dollar for a large shipper. The Moon Company is not a party to this [fol. 902] arrangement. The terminal told us that they could give us some business if we would send the cars over there, and that they would store the cars if we would give them to it. The shipper is not a party to the arrangement, and we did not make it for his benefit. We made it for our own benefit. The Missouri Pacific Railroad is part owner of the terminal (Tr. 4382). I don't know about any Court decision on that, but the terminal acts as our agent the same as any other switching line. The Augusta Railroad, Red River & Gulf Railway and St. Francois County Railroad are short line non-subscriber connections of ours, and settle for car hire on a per diem basis without free time or reclaim. The Arkansas Railroad, a non-subscriber, is allowed actual per diem with a maximum of three days on any one car (Tr. 4383). Our track facilities at the point of connection are limited and conditions in the territory don't justify expenditures to increase the track facilities. The Arkansas takes the cars in advance of requirements when we have a surplus. This is an operating economy as it permits us to anticipate car needs a week or ten days ahead, and have the cars on hand to meet requirements. I refer to car units. To the Christie & Eastern Railway Company, a non-subscriber, we allow actual free time with the exception of one day on all cars delivered. The allowance is made because of limited track storage facilities at the connection, and because orders for cars are given on short notice. That road has agreed to hold cars until they are loaded, if per diem is waived until then. We must have the cars immediately available if we expect to compete for business originating on the road. We allow the Montana Railroad, a non-subscriber, an allowance of actual per diem up to three days on each empty Missouri Pacific coal car delivered for return loading, and an allowance of actual per diem with no maximum on our own coal cars (Tr. 4384) held under load with no-bill coal. The Arkansas Short Line, Bauxite & Northern [fol. 903] Railway Company, Ouachita & Northwestern

Railroad, Warren & Ouachita Valley Railway and Warren & Saline River Railroad Company are industrially owned or controlled non-subscriber short-line connections with which we settle for car hire under the Birmingham Southern rules. Those settlements were not ordered by the Commission, but were under voluntary arrangement. The Brooking & Peach Orchard Railroad, L'Anguille River Railway Company, Lake Providence, Texarkana & Western Railroad (Tr. 4385) Company, Natchez, Urania & Ruston Railroad, Helena & Southwestern Railroad, Hutchinson & Northern Railway Company, and Reader Railroad are industrially owned or controlled non-subscriber connections with which we settle for car hire under demurrage rules with two days free time. We make the same settlement with the Murfreesboro, Nashville Southwestern Railway Company, which is not industrially owned, and the same settlement with the Muskogee Electric Traction Company, except that that road is allowed sixty hours free time under Order No. 2255 of the Corporation Commission of Oklahoma. The Augusta Railroad, Red River & Gulf, and St. Francois County are non-subscriber connections which do not have a special arrangement. They did not ask for it. We are situated about the same as the Great Northern were as to the settlements with non-subscribers. If they had asked for it, it is quite likely they would get it (Tr. 4386). The main reason they didn't get it is because they didn't ask—probably they didn't need it. We would be opposed to any change in the rules which would prohibit the arrangements we have for storing cars on other lines for prospective loading. I will furnish a statement showing for such of the roads for which the information is available and the number of days the cars were on each of the lines. I have mentioned the amount of per diem they would have paid under straight per diem and the car hire they actually paid (Tr. 4387). The number of cars held for prospective loading by the roads I have mentioned and the per [fol. 904] diem saved to each is as follows: C. & A., 972 cars, $11,277; C. & E. I., 891 cars, $13,518; Milwaukee, 220 cars, $3,575; Northwestern, 25 cars, $161; Grand Trunk Western, 980 cars, $12,049; Louisville & Nashville, 59 cars, $1,312; N. Y. C. & St. L., 383 cars, $8,132; Pere Marquette, 836 cars, $9,025; Terminal Railroad Association, 71 cars, $862; Wabash, 99 cars, $2,067.

A. L. BERGSELD, having been previously called as a witness, was recalled and testified (Tr. 4388):

In 1927 the Great Northern had some special temporary arrangements with the Northwestern, the Soo Line, the Duluth & Iron Range and the Duluth, Missabe & Northern. We wanted to use our cars for the loading of ties, which we bought on the rails of those companies, and arranged to refund the per diem on that account. The arrangement has now been cancelled. We also had an arrangement for the refund of per diem, under certain circumstances, with the Minnesota Western. That also is about to be cancelled. We also have an arrangement with the Washington, Idaho & Montana to store our cars for prospective business, and we allow them a reclaim. I overlooked that arrangement, and it is still in effect. I think that road is owned by the Potlach Lumber Company. It still has a special arrangement with us, which is an important per diem agreement (Tr. 4389). That was voluntarily entered into. I know of no element of inefficiency or disadvantage in it to us. I think it is in the general interest.

[fol. 905] A. J. BRADY was called as a witness and, being duly sworn, testified as follows:

I am General Accountant of the Erie Railroad Company, and I spent 27 years in its accounting department (Tr. 4390). I have made an investigation to ascertain the investments of the Erie Railroad Company in other companies. Neither the Erie Railroad Company nor its subsidiaries own any of the stock of the Dansville & Mount Morris Railroad Company, and do not own any of its outstanding bonds or receiver's certificates. They never have owned any of these securities to my knowledge. I have prepared a photostat copy of pages 192, 210, 219, 220 and 221 of the testimony of James E. Bradford, Auditor and Assistant General Manager of the Dansville & Mount Morris Railroad Company (Tr. 4391) in Docket 13876, entitled "Ambrose S. Murray, Jr., Receiver, Dansville & Mount Morris Railroad Company against Erie Railroad Company, et al." The exhibit is a true copy of those pages of the transcript (Tr. 4392.)

(Said document received in evidence as Exhibit No. 496.)

The Erie has a leased line which is a part of the railroad operated by the Dansville & Mount Morris, known as the Avon, Geneseo & Mount Morris, is 17 miles long and 2.35 miles is subleased by the Erie Railroad Company to the Dansville & Mount Morris. Exhibit 496 shows Mr. Murray owns practically all of the stock and bonds of the Dansville & Mount Morris, amounting to $170,000 in bonds, and $50,000 in stocks. Practically all of the receiver's certificates, amounting to $7,000, are owned by Mr. Murray. This testimony on that case was given on December 19, 1924 (Tr. 4393). That case was decided at 95 I. C. C. 13. I have prepared an extract from Poor's Manual relative to the Dansville & Mount Morris Railroad Company.

(Said document received in evidence as "Exhibit No. 497".)

The exhibit shows $50,000 of stock and $150,000 in bonds authorized and outstanding. No industry and no securities of that industry are owned by that line, nor are the securi- [fol. 906] ties of that line owned by an industry located on it (Tr. 4394). The present ownership of the stocks and bonds is now in the Estate of Mr. Murray, who died in 1924 (Tr. 4395).

[fol. 907] G. L. WHIPPLE was called as a witness and, being duly sworn, testified as follows:

I am General Superintendent of Transportation of the Union Pacific System. I have had experience as a telegraph operator, dispatcher, train master and superintendent of transportation (Tr. 4396). I am familiar with the subject matter of this case. Our arrangement under which our automobile cars are held in storage contemplates holding our empty cars of this type on the rails of the North Western, Milwaukee, Illinois Central, Great Western, Alton and Wabash in Chicago, and to a limited extent on the Alton and Wabash at St. Louis. These cars are available for the requirements of the automobile industry, the factories being located in Wisconsin, Indiana, Michigan and Ohio (Tr. 4397). No reclaims are allowed on the cars

in moving to or from holding tracks. I think that the arrangement should be confined to the western terminals of the Eastern lines at Chicago or St. Louis. The practice of holding these cars started about 1920 when the automobile industry was making every effort to secure sufficient cars to meet the demands. We owned about 3,000 cars of this type and it was difficult to get them from our rails to the automobile industry where they were needed. The lines in the loading territory placed their orders with the Chicago-Missouri River roads and when our cars were wanted the orders were transmitted to us. This did not assure the cars reaching the loading point as quickly as was necessary to keep the factories up to date, and, considering the volume of traffic and the routing, the lines serving the plants were unable to furnish their own equipment exclusively (Tr. 4398). They were, therefore, placing orders with other lines which owned the cars. It seemed that the best use to be made of our cars was to arrange for space where they might be held until required. No line knew when they might be needed, and it was recognized that if they were delayed on the track of the holding line it would be expensive to that line from the per diem standpoint. [fol. 908] We concluded to contribute by putting our cars within a reasonable distance from the industry and authorizing the holding line to reclaim the amount of per diem actually paid us during the time the cars were held. The cars are for general distribution and the arrangement does not favor any particular manufacturer. It was concluded in February, 1921 (Tr. 4399). The practice does not interfere with our efforts to be helpful to the so-called short line roads which are dependent upon us for equipment. The fact that from 10,000 to 17,000 of our cars were loaded by the industry to us last year is proof that the industry could not be as efficiently served as under the present arrangement. It would not be logical to discontinue the present practice. I do not think cars held on our rails at Kansas City or Omaha could be handled to the loading points in as satisfactory a manner as they are now handled from the holding points (Tr. 4400). We do not have the cars held at loading points because it would be difficult to properly distribute them. If the cars are held in Chicago, any number can be taken to fill an order from a particular

plant, but if they were held at a plant which did not need so many, it would be difficult to move them from one plant to another one. It is also easier to keep check on the cars and the amount of reclaim that they earn at Chicago. The cars are absolutely in our control, but we have authorized the North Western, for example, to fill orders from our cars (Tr. 4401). If the Michigan Central gives the order, our agent gets a copy of it and sees that the North Western fills it. The automobile industry realizes that the dealer or consumer of their products do not carry a large inventory but depends on prompt shipment. The necessity for constant and orderly placement of empty cars at the plants is as much important now as it was in 1920, and if the present practice was discontinued they would experience the same inconveniences now as they experienced before the arrangement was made. If we held these cars on our own tracks at the Missouri River we would not get any per diem (Tr. [fol. 909] 4402) and if they were so held, the lines that now hold them free of per diem would naturally move them to the home line. That would include many movements from as far east as Chicago, in preference to paying per diem, in addition to the expense of setting aside holding tracks in Chicago or elsewhere awaiting loading orders. Also, if a shipper had to depend upon getting equipment from points 400 or 500 miles west of Chicago, he would be inclined to order a supply from more than one line, using the cars that arrived first and cancelling orders for the balance. This would result in the excess being returned empty or used for indiscriminate loading which would scatter the equipment (Tr. 4403). If we held our cars we would not collect per diem on them. My statements have referred to cars suitable for automobile loading (Tr. 4404). The difference between this practice and turning cars over to a short line for loading without per diem is that the ordinary freight car is subject to a call from almost any shipper for any commodity, and if it was turned over to a line out of our reach it might be difficult to get it back. The wide door cars are not of this type (Tr. 4405). In dealing with coal cars there is a nearer approach to the wide side door car than any other type of equipment. When our cars of any class are held on our rails, they are not earning per diem. The short line holding a car for prospective loading might

be required to pay $1 a day per diem (Tr. 4406) because while there might appear to be a surplus today the car tomorrow might not be a surplus car, and if it was sent to a foreign railroad it would not be so quickly available to move to a point where it was wanted. We do not maintain a surplus of cars for the automobile industry alone, but those cars are not greatly in demand for other shipments. We have plenty of other cars suitable for most other commodities (Tr. 4407). If one of our cars was sent to a mine on the Union Pacific and held by the mine on a track owned [fol. 910] by it, we would get nothing for the days the car was held before it was loaded and sent out. It is unlikely that a car would be placed on and removed from a private side track by the Union Pacific itself. We would not place a car there except on order. Also a short line holding a car gets the use of that car, while in the case of automobile cars the holding road does not necessarily get the use of the car (Tr. 4408). It is difficult to set up a particular example. The idea of eastern lines in ordering automobile cars from the holding roads is to route the shipments via lines which held the car free of per diem. An empty car arriving from the east and being held at the Missouri River to protect orders from lines in the east would be returned east as soon as the orders were received. In 1927, 12,821 of our automobile cars were held in storage under the arrangement described (Tr. 4409). Per diem was paid us but their reclaims were allowed to the holding roads in the amount of $286,929. We have another arrangement with the Milwaukee and the Illinois Central under which we allow those lines reclaim of actual per diem with a maximum of one day on empty cars delivered at Council Bluffs in bad order and sent back to the delivering road for repairs. The arrangement is reciprocal and is made because inspection is made by the receiving road which must take the car into its own yard before it can switch out the bad order cars. It is often not possible to return such cars prior to midnight. The Milwaukee and Illinois Central are subscribers (Tr. 4410). In another case the Union Pacific allows the Missouri Pacific a reclaim of 2 days on our stock cars returned from Kansas City to Leavenworth. This is due to the fact that shipments originating on our line between Leavenworth and Kansas City are routed over the Missouri Pacific to

Kansas City on a car rate, and we allow that road a 2 day reclaim covering the return of the empty car. Our average haul on this stock to Kansas City is 151 miles and on the Missouri Pacific is 68 miles, so it is logical to use the Missouri Pacific route. Unless the empty cars are returned [fol. 911] via Leavenworth, we would not avoid the long haul of 150 miles, so to produce economy we relieve the Missouri Pacific of 2 days per diem to save the 110 miles of extra haul on the Union Pacific (Tr. 4411). Under this arrangement traffic from the Leavenworth branch is handled with a considerably less number of cars. We have another arrangement with the Boise Valley Traction Company, a non-subscriber with which we connect at Boise, Caldwell, Middleton and Nampa, Idaho. We settle car hire with that line on per diem, except that we give it a reclaim on cars handled by it in switching service, the arrangement being reciprocal on cars we switch for it. The switching business is non-competitive. They switch about 150 cars a year for us and we switch about 50 cars for it. This is in a class by itself because the subscriber does a substantial business for the nonsubscriber. I have no other examples (Tr. 4412). The Glendale & Montrose, the Intermountain, the Salt Lake, Garfield & Western, the St. John & O'Hare, the Tooele Valley, and the Walla Walla Valley are nonsubscriber short line connections which settle on straight per diem without reclaim or free time. We switched 150 cars for the Boise Valley Traction Company (Tr. 4413). They pay per diem and the reclaim is from $3 to $4. Apparently the records are checked and the reclaim changed from time to time. I don't know whether the reclaim is fixed on actual time or average. The amount of $286,000 per diem which I said was refunded on 12,800 automobile cars was on all the cars I mentioned and is generally divided. The following is a statement of the cars held by each road and the reclaim allowed. The Alton held 213 cars and received reclaim of $15,975 (Tr. 4414); the North Western 2814 cars, $60,936; the Great Western 1226 cars, $29,751; the Milwaukee 6,195 cars, $88,695; the Illinois Central 1585 cars, $75,294; the Wabash 723 cars, $12,449; the Alton 42 cars, $2,688; and the Wabash 23 cars, $1,141. All those cars were held at Chicago except the last

[fol. 912] two roads which hold the cars at St. Louis. It is agreeable to get the mileage of the short lines which I mentioned as connecting with the Union Pacific from the annual reports to the Commission (Tr. 4415). I don't know that any of those roads are industrial carriers.

S. A. HERRING was called as a witness and, being duly sworn, testified as follows:

I am Superintendent of Car Service of the Oregon Railroad and Navigation Company, a unit of the Union Pacific System and have been for many years. We have arrangements with some short line connections in the Northwest (Tr. 4416). We connect with the Washington, Idaho & Montana at points in Washington where we store cars for prospective business. The road is 50 miles long. We have the same arrangement with the Spokane International with which we connect at Spokane and the Pacific Coast Railway at Seattle. I have not the mileage of those roads, but the Spokane International is a Canadian Pacific subsidiary. We also have arrangements with some nonsubscribers. The City of Prineville Railway which connects with us at Prineville Junction, Oregon, is 19 miles long and is on a straight demurrage basis with the average agreement. The Great Southern Railway with which we connect at The Dalles is 41 miles long and has the demurrage average agreement. The Mount Hood Railroad connects with our line at Hood River, Oregon, is 22 miles long and has a demurrage average agreement (Tr. 4417). The Sumpter Valley, which connects with our line at Baker, Oregon, has a demurrage average agreement. We also connect with the Cowlitz, Chehalis & Cascade at Chehalis, with the Longview, Portland & Northern at Longview, Washington, and with the Newaukum Valley at Napavine, Washington, and have the same arrangements with those roads as the Great Northern and for the same reasons. We waive per diem on 706 cars held by the Washington, Idaho & Montana amounting to $3,344. On the Spokane International 186 cars were held [fol. 913] and $1,082 per diem waived, and on the Pacific Coast Railway 97 cars were held and $737 per diem waived. If these cars are not held for prospective loading we would

have, in the case of the Washington, Idaho & Montana, a back haul of about 64 miles and a very considerable delay in furnishing equipment on order (Tr. 4418). The back haul would result from the fact that our equipment would be in Spokane territory and we would have to haul it to Oaksdale, Washington, about 64 miles. The cars get to the point where they are held for prospective loading, and by turning them over to the Spokane, Coeur d'Alene & Northern which gives them to the Washington, Idaho & Montana by which they are held. There is no appreciable difference in the movement in the placing of empty cars for prospective loading and the placing of the cars upon order. Our cars are held on the 3 roads I named for general loading by any industry and not for any particular industry (Tr. 4419). These roads pay per diem on the cars after they are set for loading and the per diem runs until they are returned to us. They are usually stored in close proximity to the point where they are to be used and per diem starts as soon as they are set for loading. I may illustrate the difficulty of service because of infrequent train connections by referring to the Washington, Idaho & Montana. In storing cars on that line we make deliveries to the electric line at Oaksdale. That line leaves Oaksdale about midnight but our train gets in about 1 o'clock. Because of this failure to make connections, it would be 48 hours before we could get a car to a shipper on an order (Tr. 4420). I do not think the arrangements I have referred to are departures from the Per Diem Code, although they may be a broad interpretation of the rules. I think the rules provide that local conditions must be taken into consideration, and I think they are elastic enough to cover this. Non-subscribers were placed on a demurrage basis many years ago by the Pacific Northwest Demurrage Bureau, which [fol. 914] carried a tariff clause providing for a demurrage charge against small railroads. The practice has since been followed. I will have to answer the question as to whether or not they are departures in the same way I answered the other question. It is a matter of conditions in the territories. I am not in a position to say whether, under the present Per Diem Code, each road can dicker with the short line connections on any basis it sees fit (Tr. 4421). I did not intend my former answer to imply that.

I do not know how the people on different roads would interpret the rules, but I interpret them in such a way that we can make arrangements by taking local conditions into consideration. Since the rule was changed in 1921 it has been difficult to change the old practice. The question is whether or not we are now adhering to the Code (Tr. 4422). Under my interpretation, we can depart from the rules if the local conditions justify it. I see no difference between cars held for storage for use by the owning road and our arrangements with nonsubscribers. I am not in a position to say that it would be well to make rules which would require us to terminate these practices with short lines (Tr. 4423). There are different conditions at different points. I think some of our arrangements are reasonable with respect to efficiency and economy and in some cases are not reasonable. The demurrage cases have been of long standing. We have hesitated to make any changes. I have no authority to recommend a change. It is my personal opinion that some of these arrangements are not economical and are not efficient. I am trying to distinguish between the local situations and the three cases where the back haul of the empty cars is involved (Tr. 4424). There is a question in my mind as to whether or not in those three cases and in the demurrage cases the arrangements tend to produce economical transportation. The Central of Oregon is also on a demurrage basis. I don't know of [fol. 915] any road named the Columbia & Cowlitz. The Craig Mountain Railroad connects with the Camas Prairie Railroad (Tr. 4425), a subsidiary with which I have nothing to do. The Nez Perce & Idaho connects with the Camas Prairie Railroad. I have given the mileage of each short line where I knew it (Tr. 4426).

E. H. Holden was called as a witness and, being duly sworn, testified as follows:

I am General Superintendent of Transportation of the Kansas City Southern Railroad and have been in transportation work 16 years. I am acquainted with the general operation of switching lines at Kansas City, and appear for both the Kansas City Southern and the Kansas & Mis-

souri Railway & Terminal Company (Tr. 4427). The Kansas City Per Diem Reclaim Association, made up of the Kansas City lines, deals with per diem and reclaim in the Kansas City switching district. Intermediate reclaim was allowed by rule of the American Railway Association effective July 1, 1925. When that rule was received, the Chairman of the Kansas City Association issued a letter ballot to all members to vote on the question of making this rule effective in Kansas City on July 1, 1925. The Kansas City, Kaw Valley & Western was the only road which voted in the negative, and it also protested against the adoption of a change in the reclaim rules by letter ballot since the by-laws of the Association did not provide for it. The matter was carried on the docket (Tr. 4428), and at the next meeting of the Kansas City Association in September, 1925, Mr. O'Brien of the Kansas City, Kaw Valley & Western said that the rule would place a heavy burden upon their line until the rates could be adjusted, which he said was then up with the Commission. He said he would be willing to vote for the rule and pay the reclaim if the effective date could be made October 1, 1925. A motion to make it effective on that date was carried. [fol. 916] The minutes of the September meeting were approved at a meeting in March, 1926, and Mr. O'Brien, who was present, offered no objection. The effective date of the intermediate switching reclaim rule was postponed from July 1, 1925, to October 1, 1925 as a concession to the Kansas City, Kaw Valley & Western (Tr. 4429). 85% of the cars handled by the Kansas & Missouri Railway & Terminal Company are intermediate switched traffic between the Kansas City, Kaw Valley & Western and other carriers, and it would be heavily burdened with per diem expense if the intermediate reclaim rule was changed as requested by Mr. O'Brien at the Kansas City hearing. Before the Terminal Company was organized the Kaw Valley Company connected with other lines at Kansas City through the use of a line about 2 miles in length owned by the Kansas City Outer Belt & Electric Railroad. When that line went into receivership its property was sold. The Terminal Company was organized in November, 1922, to purchase the property and complete the construction. The Kansas City Southern went into a contract to purchase jointly with the Kaw Valley Road the bonds and stock of

the Terminal Company (Tr. 4430). The Kaw Valley and the Kansas City Southern were each to purchase one-half and own a half interest in the road, but because of the receivership of the Kaw Valley the Kansas City Southern had to take over the entire property of the Terminal Company. Its line is shown on Exhibit 176. It is a switching line with no line haul business, owns no equipment and is now electrically operated. Since it started business its operations have been principally conducted by the crews and employees of the Kaw Valley and with the motive power of that company. The receiver of the Kaw Valley made a contract in December, 1925, to perform a substantial part of the transportation service for the Terminal Company at a rate per car according to zones. The Kaw Valley also uses a part of the Terminal Company's yard without the payment of interest rental (Tr. 4431). The entire [fol. 917] operation of the Terminal Company is by employees of the Kaw Valley and the General Manager of the two roads is the same. The yard I spoke of is at the point where the Kaw Valley connects with the Terminal Company at the west end. The Kaw Valley Company has very few terminal facilities and uses those of the Terminal Company which as an intermediate carrier is the only outlet of the Kaw Valley Line to the steam lines at Kansas City. The Kansas City Public Service Company is a street railway in Kansas City and does not go out of Kansas City (Tr. 4432). The Terminal Company is used as a freight terminal by the Kaw Valley Line. All its service is switching, and about 85% of it is intermediate switching between the Kaw Valley and other roads. I have prepared an exhibit showing the number of cars handled by the Terminal Company in intermediate service between the Kaw Valley and other carriers at Kansas City in 1927, the per diem paid and the intermediate reclaim received.

(Said document received in evidence as Exhibit No. 498.) (Tr. 4433.)

I have prepared another exhibit showing the number of cars handled in intermediate switching service by the Terminal Company between the Kaw Valley Road and other carriers at Kansas City for the 12 months prior to the effective date of the intermediate reclaim rule and for

the 12 months subsequent to that date. The statement also shows per diem paid, reclaim received and net per diem expense in both periods.

(Said document received in evidence as Exhibit No. 499.)

The intermediate reclaim rule was made effective at Kansas City October 1, 1925, and the Terminal Company was not in a position to recover any part of the per diem expense prior to then (Tr. 4434). There is no per diem expense to an intermediate switching carrier when a car is received and delivered the same day, and under the rule no reclaim would be allowed because none accrues. The Kaw Valley controls the physical operations of the Termi- [fol. 918] nal Company. Most lines at Kansas City make a per diem transfer which reaches the Terminal Company about 10 o'clock at night (Tr. 4435). If cars delivered at that time are not delivered by the Kaw Valley to its own line prior to midnight, the Terminal Company has to pay one day per diem on the car. Under the present rule it can reclaim that per diem but prior to October 1, 1925 it could not reclaim. The Terminal Company gets $6 a car on intermediate switching, except when a car goes through two intermediate switch lines, in which case the Terminal Company gets $3.90 (Tr. 4436). I have prepared a statement showing the financial condition of the Terminal Company for the year 1926.

(Said document received in evidence as Exhibit No. 500.)

The first page of the exhibit is a general balance sheet as of December 31, 1926. The Terminal Company has direct connection at Kansas City with the Rock Island, Kaw Valley, Kansas City, Leavenworth & Western, Kansas City Southern, Kansas City Terminal and Missouri Pacific (Tr. 4437). The Kaw Valley could deliver to those lines through the Terminal Company with its own power, at one operation, and since the Kaw Valley performs switching for the Terminal Company it is in a position to control, to a considerable extent, the per diem to the Terminal Company on intermediate switch cars.

Cross-examination:

The Kansas City Railway Terminal Company now owns the Kansas & Missouri Railway & Terminal Company. The

present rates of the Terminal Company are $6 and $3.90 (Tr. 4438). I do not know what those rates were prior to October, 1925, but I know the company did not do very well. The time of the delivery from the K. C. S. to the Terminal Company depends on the traffic. One per diem transfer is made every day, and usually other connections are made about 10 o'clock in the evening. Special interchanges are made at almost any time (Tr. 4439). It is a little more than 2 miles from the connection between the K. C. S. and the Terminal and the connection of the Terminal with the Kaw Valley. I don't suppose the Kansas [fol. 919] City Southern make a classification of the cars beyond the transfer. I think we could take the cars off and deliver them to the Kaw Valley, or any other line, by 12:01. Frequently there is nothing but Kaw Valley stuff and no switching is necessary. The Kaw Valley pays 50% of the maintenance on 5 tracks in the yard of the Terminal and performs no service free of charge except that provided under the contract (Tr. 4440). The Kaw Valley weighs cars for the Terminal under the contract and is paid a specific amount for weighing them. The contract provides that that is part of the Kaw Valley's work (Tr. 4441). I don't know what the rates of the Terminal Company were prior to October, 1925. The Kansas City Southern handles traffic representing the Kaw Valley and originates traffic going to points on the Kaw Valley. Sometimes that business is up and sometimes it is down. A considerable portion of the traffic handled by the Terminal Company is intermediate and a large portion of it is for the Kaw Valley. I don't know why the Kaw Valley should take the burden of the intermediate per diem, but in my opinion the rule is fair (Tr. 4442). I don't know why the Terminal got the $3.90 or should get it. They had to pay $1 for handling the car which applied on any car that accrued per diem. The Kaw Valley can save per diem on some reclaims but cannot save all of it. The Kansas City gets those cars up from a number of connections in Kansas City (Tr. 4443). Some are loaded at industries and others by connecting lines, so that we really cannot get them into the per diem transfer. Where two intermediate reclaims accrue, I don't see why the switching line should pay the per diem, as the Kaw Valley is a road haul carrier (Tr. 4444). So long as the Kansas City Southern and the Ter-

minal are members of the A. R. A. we have no discretion to depart from the per diem code and should make the intermediate reclaim. Our local agreement was made under the Association's rules. I don't think we should vary from the rule on intermediate reclaim. I don't think we can [fol. 920] under our obligation to the Association. We agree to comply with the rules. We have the option under the rules of a local agreement which was made (Tr. 4445). We try to treat the rules of the Association as iron-clad, but I think we have the option of a local agreement. I don't think we could cover part of the per diem under our rules without the sanction of the other lines which made the agreement (Tr. 4446). I think the Kaw Valley performs some intermediate switching, but not in Kansas City. The Terminal Company performs intermediate service on traffic between the Kaw Valley and lines other than the Kansas City Southern, but if we are going to assume part of this there are other lines interested. If the other lines were agreeable, we could make that arrangement under the rules. I think it needs the consent of all the lines. That is the kind of an agreement I referred to (Tr. 4447). I was not at the September meeting when the intermediate per diem rule was considered at Kansas City. I said that it was agreed to by representatives of all the lines. The agreement to any rule has to be unanimous if it varies from the American Railway Association rules. I think the Kansas City Southern has given equipment to the Kaw Valley to hold for prospective loading of potatoes (Tr. 4448). We may not have given the Kaw Valley the cars but we have held them for loading. We give none of our other connections cars to be held for prospective loading. I said that I thought the Kaw Valley performed some intermediate switching but not at Kansas City. The Kansas City Southern pays intermediate switching at Kansas City as it connects directly with only one line, the Missouri-Kansas-Texas (Tr. 4449). The Kansas City Southern has 3 non-subscriber short line connections. They are on a demurrage basis. They have no charter and are treated as industries. I don't think the Gulf, Sabine & Red River Railway is shown as a common carrier. It does not file tariffs with the Commission that I know of (Tr. 4450). I think it is owned by the Lumber Company. It is a logging line which hauls logs to the River. We made no allowance on

[fol. 921] that line, but in times past they had a turpentine plant that originated some traffic. The Mansfield Railway & Transportation Company is 3 miles long and the Sabine & Neches is 11½ miles long. The Mansfield Company is a connection of the Texas Pacific. When Rule 6 was adopted we asked them about the demurrage basis which they then had (Tr. 4451). They did not want to change and to protect ourselves we continued the situation. The Sabine & Neches was in a similar situation. I don't think the car service rules authorize these departures. They are in disregard of the rules, but I don't think they are a violation of the agreement (Tr. 4452).

Mr. Crawford: We never considered that present Per Diem Rule 6 covered industrially owned and controlled railroads. It does not say by whom they must be declared to be industrial common carriers. Under the rule we could declare it, they could declare it or the Commission could declare it (Tr. 4454).

The Witness: I think if a road is constructed to handle one railroad's business, it might be in a different position than one constructed to take care of industries. I see no difference between railroads owned by an industry which furnishes most of its tonnage and railroads which handle business for people not interested in it. I don't think those facts should be determinative of the car hire which ought to be paid. If they are common carriers they would have to be treated alike. I don't recall that the 3 roads to which I have referred are covered by the Commission's decision in the Tap Line Case. I think the Mansfield Company was the only one in existence (Tr. 4455). If the Commission fixed a division for a tap line and the trunk line should in addition to that give the tap line free time, I don't think the trunk line would be giving a greater allowance than the Commission had prescribed if it was for service performed (Tr. 4456). I do not know whether or not the Commission in the Tap Line Case gave consideration to allowances for [fol. 922] the short lines. Prior to October, 1925, the Kansas & Missouri Railroad Company paid per diem on cars in intermediate switching service if the per diem accrued (Tr. 4457). It was not allowed any reclaim at that time. It is my understanding that under the present rules subscribers can make local agreements and relieve each other

of per diem. Subscribers and nonsubscribers could make an agreement if they got together, but it is not permissible under the rules of the Association (Tr. 4458). We have gone into an agreement with the American Railway Association and have agreed on rules to be guided by. We would not want to agree that we could not make these arrangements with somebody else. The rule obligates us not to make a rule with a nonsubscriber, but permits us to do so with a subscriber (Tr. 4459).

T. W. DEMAREST, having been previously called as a witness, was recalled and testified:

I have testified in this case before with respect to the elements entering into the cost of owning a car. At page 585 of the record I was asked to show the cost per car day of users' defects. Inquiry was made of six representative Class I carriers in various parts of the country and the result was 1.014¢ per car day as the cost of users' defects (Tr. 4460). The carriers were asked to price for August, 1927, on the A. R. A. basis the cost of repairing users' defects on foreign cars on line, plus amounts paid on defect cards issued covering foreign car users' defects for which they were responsible, and excluded amounts billed others on authority of defect cards received. The total cost reported was $225,692,88 and this was divided by 31 days times 717,979 cars, the number of cars on line resulting in 1.014¢ per car day. On the statement that users' defects are included in the repair accounts in determining the per diem rate, and that users are paying the cost of such repairs twice, we find that as between car-owning carriers the duplication is reciprocal; that as between car-owning car-
[fol. 923] riers and non-car-owning carriers the latter does not participate in the reciprocal; and that as between car-owning carriers and car owners who are not carriers the carriers assume the cost without reciprocals from the owner. This means that between car-owning lines there is a duplication, but that as between those lines the effect is wiped out (Tr. 4461). As between car-owning carriers and non-car-owning carriers the latter paid twice, and as between car-owning carriers and car owners which are not carriers the car owning carriers paid twice. On page 585

of the record there was a reference to payments by handling lines to owners for foreign cars destroyed, being included in the repair charges and the per diem rate. This amount was ascertained for 1925 from the same six carriers. They paid $890,457 on 720,657 cars, the average number on line daily, resulting in .338¢ per car day. The application is the same as in the case of users' defects. At page 591 of the record the question was raised as to the effect upon interest resulting from a reduction in the investment on the amount earned from depreciation in the per diem rate (Tr. 4462). The theory of the inquiry was whether or not interest on the investment should be charged in every year if the investment is reduced each year by the amount of the charge to depreciation. When a car is bought a carrier sets up a depreciation charge and pays interest on borrowed money or charges interest to the investment if payment is made in cash, no matter where the car is. The owner is entitled to collect such expense from the user as the car must earn its investment and salvage and earnings must come from revenues. The amount earned in the per diem rate to represent depreciation as between car owners is not a credit to investment as per diem credits and debits balance, there being no credit for depreciation to the investment. As between Class I carriers payments on account of per diem and receipts must [fol. 924] balance (Tr. 4463) and taking those carriers as a whole no new money is received to apply to the depreciation account. The amounts earned to retire the investment must come from operating revenues. In calculating per diem rates one carrier cannot be considered with a per diem credit and another with a per diem debit. Class I must be considered as a whole and with them there is no credit or debit balance at the end of the year. If investment in a car of $1,343.33 is reduced each year by depreciation at 4.5% on investment, the total interest at 6% on the investment in each year would amount to $913.51, or an average annual return of 3.54% as compared with a total interest return of $1,548.33, if the investment is not reduced, or an average return of 6%. By reducing the investment, the average interest earned during the life of the car is reduced from 6% to 3.54% and the difference in the interest collected would be $1548.33, less $913.51, or $634.82 (Tr. 4465). Since depreciation earned in the per diem rate is not a

debit or credit, it is not deductable as between Class I carriers as a whole. The car must earn its cost out of revenue from freight carried and owner's earnings are confined to revenue freight carried on its own line, per diem being paid to maintain the car while it is away from home. Some factors in the per diem rate are being viewed as accounting matters, and sufficient weight is not given to the fact that the per diem rate should, in addition to representing the cost of owning the car, represent a rental rate to the borrower, which he would have to pay if he went into the market at the time of use and made good his deficiency by buying new equipment. Reducing the investment by depreciation is not consistent with the value of the service to the borrower. Moreover, the car owner is deprived of the power of earning revenue when the car is off his line (Tr. 4466), and there is nothing in the per diem rate to cover this loss. Ordinarily a car is as available for service to the user in the tenth year as the second year, since wear is overcome by maintenance and obsolescence is overcome to [fol. 925] some extent by improvements at owner's expense. When the capacity of the car to serve is not consistent with service demands it is retired at the owner's expense. The age of a car is not representative of its earning power. A borrower takes a car to suit the business he has for it, and a car one year old or 15 years old is as suitable as a new one. If he provided a new car he would pay interest on the original book cost, and to the car owner there is no consistency in charging interest on a depreciated book value because the car as a vehicle of transportation does not depreciate that way. Due to variation in the age of cars, the handling of per diem charges on the basis of reducing annual interest charges is impractical (Tr. 4467). In compiling per diem balances all cars are considered as being of the same age. With a reducing book balance, cars would have to be separated by age and a separate rate made for cars of different age. Moreover, in calculating the per diem rate, the yearly cost was prorated on the basis of 365 days in the year. Cars earn their cost out of revenues other than per diem and those revenues are earned by days in service. In 1925 the service days for Class I carriers amounted to 296.75, based on records of Class I carriers, excluding private cars. In that year there were 2,317,423 average cars on line daily. 81.3% of them were active, and

the average number of days each car was active in the year was 296.75 (Tr. 4468), which is 81.3% of 365 days. In 1925, 8.4% of the total number of cars was unserviceable on account of bad order. By 1926 that was reduced to 6.8%. The average active freight car days per year was arrived at by deducting the average daily unserviceable and surplus cars from the average number on line daily, by dividing the active cars by the average on line daily and by applying the percentage thus obtained to the number of days in the year. If we divided the cost of owning and maintaining a car, amounting to $360.75 by 365 days we obtain 98.833¢ per car day. If we deduct the bad order car days [fol. 926] we get 334.34 serviceable days and on that basis the per diem rate would be $1.09 (Tr. 4469). If we deduct bad order and surplus cars we obtain a per diem rate of $1.21. On the basis of 1926 figures related to unserviceable cars the $1.09 rate for 1925 would become $1.06 in 1926 and the rate of $1.21 for 1925 would become $1.17 for 1926. To provide against car shortages and car maintenance more cars than are normally required must exist and this burden falls on the car owners. Furthermore, the cost of owning a car is in excess of the per diem cost to the borrower, as in calculating the per diem rate elements of cost which were not readily ascertainable under accounting methods were excluded. I have already mentioned some elements of cost that we did not include because they could not be accurately apportioned. Some such elements which were not included in the per diem rate calculation (Tr. 4470) were repairs to car repair tracks, etc., cost of handling and transporting track materials, shop machinery repair materials, power plant machinery repair materials, shop building repair materials and power plant building repair materials; nor was there included any interest on investment in such materials or the cost of switching bad order and repaired cars when not done by assigned crews and locomotives. There is a material amount of this switching done. The cost of switching can be ascertained in the operation of freight car repair tracks, but much of it is done, the expense of which does not get into the cost of shifting bad order cars. In effect my statement means that under some conditions the costs of users' defects is a duplicate charge; that in the cost of owning a car there are elements of cost which I did not include (Tr. 4471) and which are not now included, and

that under certain conditions there is probably about a cent and a half a car day included in the per diem rate which under some conditions becomes a duplicate charge. On the other hand there are items not included in the cost study [fol. 927] which ought to go into it and which would more than counterbalance any reduction. If interest on investment was reduced proportionately with depreciation, it would produce different per diem rates on cars of equal utility, which rates vary each year with the increasing age of each car. That would be a most material complication in per diem rates (Tr. 4472). I am assured that it would not be practical or even possible to establish per diem rates on any such basis. It would also be true that if per diem was ascertain- on the real value of individual cars we would have different per diem rates on different cars, regardless of condition, because of different costs (Tr. 4473).

Cross-examination:

If the earning value of a car to the borrower was included it would certainly increase the per diem rate. The carrier buys a car primarily to care for its own business, but must supply surplus cars to provide for lack of investment by borrowing carriers. The borrowing carriers do not participate in the cost of car ownership as a car owner itself does. Thus the cost to an owner is in excess of a cost to the borrower (Tr. 4474). The owner is under an expense in relation to car maintenance and car replacement that the borrower does not incur. I said that a carrier buys a car to take care of the tonnage it originates and also for the service of the borrower in business which it originates off the carrier's lines and might not come back to the carrier's lines (Tr. 4475). A car owner supplies himself with cars to use in the traffic he expects to handle. Its cost must come out of my revenue. I feel that it is the duty of all carriers to provide cars in proportion to the business they originate. If they fail to do that they cannot escape their obligations (Tr. 4476) to the people who own the cars. The only reason for the existence of a car is to earn money and get revenue from the traffic hauled in it. I have gotten a per diem rate by taking the number of cars and dividing it by the number of days. I assume the same calculation could be made to arrive at the cost of owning

[fol. 928] the car upon a mileage basis. Some cars are handled that way but I do not know the composition of the rate. I am assuming that in compiling a mileage rate the factors taken into consideration had their effect (Tr. 4477). Taking the figures as a whole, I think my figures could be reduced to a mileage rate for all the railroads but I have not made any calculation. The figures in detail are in the record. The figures I have in connection with the fluctuation in the age of the cars are included in my initial statement (Tr. 4478). Referring to the difficulty of fixing the per diem rate because of the varying age of cars, I have a life period of 21 years plus. In the previous statement, during the life of that car, the per diem rate on it would undergo 18 changes, if it was based on calculating interest on a reducing book balance of investment (Tr. 4479). I know nothing about the accounting figure because I am not an accountant. It is well known that cars are bought under equipment trust certificates and so much is paid off in each year (Tr. 4480). When money is charged by a carrier to operating expense because of accrued depreciation, I don't understand that there is any money transaction until the car is destroyed or replaced. Theoretically there is a charge to operating expenses which does not cover the handling of any cash, although the railroad may actually have the money. As I took $60.45 out of the original book cost of the car and put it in cash or invested it, we get a reduction. We can add the book value and accumulated depreciation each year and still get $1343.33, the original cost. If we had that money and put it out at interest we would be getting something out of that (Tr. 4481) but if we are crediting investment that is not what happens. If we had a cash fund to cover depreciation and put that money out at interest we would accumulate interest on the depreciation and still get the depreciation, but there is no such fund. I don't think I have ever seen a contract for an equipment trust and do not know anything about them (Tr. 4482). I as-
[fol. 929] sume that as reductions are made in the principal of the equipment trust the interest would reduce. The amounts we would use to reduce the principal amount would come from revenue (Tr. 4483). When a carrier purchases a car it sets up a depreciation fund as a book operation and would charge off the investment at 4½¢ per annum. The charge off for the first year would become effective as

of the second year. I don't think there is any depreciation set up at the time of the purchase, although I would rather not say (Tr. 4484). If I have $2,000 and buy a car or invest the money, I am getting interest on it; but if I keep the money I am losing interest. That is a little different from charging interest to investment. In saying that a car must earn its costs out of revenue from freight carried, I meant that it must earn enough to carry the cost. The wear of a car is covered by charges to maintenance account (Tr. 4485), so that through charges to operating expenses we have a car fully maintained at the end of the tenth year. Although we have maintained the investment intact we have a charge in the per diem rate to depreciation. The car is fully maintained through the repair account (Tr. 4486). But I cannot agree that because I keep the car in repair I should eliminate from the cost of the car the cost of keeping it in repair (Tr. 4487). My costs which total $988.33 are 1925 costs (Tr. 4488). To earn money to maintain 100 cars we have only 85 cars available, but we have to maintain the 100 to have the 85 available. In fixing the $1 per diem rate it only gave me $1 a day for 100% of the cars. When I said that it is impractical to handle per diem charges on the basis of reducing the annual interest charges, due to variation in the age of cars, I did not mean it was impossible. It would materially complicate the calculation of per diem (Tr. 4489). Under my figures we use the average cost for each car. If the cost this year is $1343 and it is exceeded next year, theoretically the per diem rate would correct itself each year. I do not see that to compute interest on depreciated investment we would have to do no more [fol. 930] than report original cost, accrued depreciation and deduct the accrued depreciation from the aggregate investment. If we have 1,000 cars the record on those cars must go some place (Tr. 4490). They may be of 19 different ages and on the reducing book balance theory there would be 19 different per diem rates. I presume that the carriers have reported to the American Railway Association the total charge to depreciation. In computing my rate of $1/ I took all cars into consideration, whether idle or not, on the basis of 365 days a year. The figures I have given allow for unserviceable cars (Tr. 4491). If we computed

our car hire on a depreciated cost basis, we would be fixing our rental on a downward trend, but if the value to the user, in the meanwhile or the cost of reproduction was depreciating, the rate ought to increase (Tr. 4492).

C. W. CRAWFORD, having been previously called as a witness, was recalled and testified:

I have testified in this case before, but have prepared certain additional information. Exhibit 11 is a list of subscribers to the Car Service and Per Diem Agreement as of March 1, 1927. Since that date the following railroads have become subscribers and should be added to the exhibit: Burlington, Muscatine & Northwestern Railway; Chicago, Springfield & St. Louis Railway Co.; Cincinnati, Hamilton & Dayton Railway Co.; Colorado & Wyoming Railway Co.; Jacksonville & Havana Railroad Co.; Laurinburg & Southern Railroad Co.; Los Angeles Junction Railway Co.; Meridian & Bigbee River Railway; Muscle Shoals, Birmingham & Pensacola Railroad; Oneida & Western Railroad Co.; San Luis Southern Railway Co.; Southwest Missouri Railroad Co.; Tavares & Gulf Railroad; Terminal Railway-Alabama State Docks; and Virginia Central Railway. The Central West Virginia & Southern and the Detroit Terminal have withdrawn and the Lima & Defiance has been suspended because of failure to meet its per diem obligations. The Bullfrog Goldfield, the Olean, Bradford [fol. 931] & Salamanca and the Potato Creek have discontinued operations and should be eliminated (Tr. 4498). The Bangor Railway & Electric Company has been absorbed by the Bangor Hydro-Electric Co.; the Chicago, Milwaukee & St. Paul is now the Chicago, Milwaukee, St. Paul & Pacific; the New Mexico Central has been absorbed by the Atchison, Topeka & Santa Fe; the Oklahoma, New Mexico & Pacific has been absorbed by the Gulf, Colorado & Santa Fe; the Peoria Railway Terminal is now the Peoria Terminal Company; the Spokane & Eastern Railway & Power Company and the Inland Empire Railroad Company are now the Spokane Coeur D'Alene & Palouse Railway; the Tampa & Jacksonville Railway is now the Jacksonville, Gainesville & Gulf Railway; the Union Stock Yards Com-

pany of Omaha is now the South Omaha Terminal Railway; and the Washington & Vandemere Railroad is now included in the agreement of the Atlantic Coast Line. Changes in the list of subscribers are occurring all the time, but this information brings the list up to date as of March 15th (Tr. 4499). At page 417 of the record, I was requested to furnish a statement of roads appearing on Exhibit 11 less than 100 miles long and not subsidiaries of trunk lines. I have prepared such a statement.

(Said document received in evidence as Exhibit No. 501. It is reproduced at the conclusion of this narrative of evidence.)

Exhibit 12 contained a list of steam roads which were not subscribers. There have been a number of changes in this list of carriers since the exhibit was introduced (Tr. 4501, 4502). I have a corrected Exhibit 12 based upon the latest available information.

(Said document received in evidence as Exhibit No. 502. It is reproduced at the conclusion of this narrative of evidence.)

Per Diem Rule 6 provides that subscriber roads which settle with their nonsubscriber connections (other than roads which have been declared industrial common carriers) at the per diem rate without free time and without reclaim, but does not provide a method of settlement with roads which have been declared industrial common car-
[fol. 932] riers. The reason for this was because the Commission condemned the per diem and reclaim plan in several decisions (Tr. 4503) as applied to industrial common carrier switching roads, and established the Birmingham Southern Rules. In other decisions it prescribed the same method of settlement for industrial roads participating in joint rates, and because of this fact it has not been possible to prescribe a uniform rule to cover settlements with industrially owned or controlled nonsubscribers. Exhibit 502 shows that 52 industrially owned roads and 144 roads not industrially owned pay per diem without free time or reclaim, 29 industrial roads and 18 non-industrial roads pay per diem with free time or reclaim, 41 industrial roads have the Birmingham Southern Rules, 34 industrial roads

and 18 non-industrial roads settle under the demurrage rules, and 43 industrial roads and 5 non-industrial roads are plant facilities. Out of 185 roads not industrially owned or controlled, 144, or nearly 80%, settle under Per Diem Rule 6 (Tr. 4504), so that settlements contrary to the Rule apply only in the case of 41 roads or 10% of the total non-subscriber roads reported. All the exceptions are in here. At page 476 of the record, we were requested to furnish a list of the direct connections of the roads on Exhibit 12 which make settlement on a different basis than that prescribed by Per Diem Rule 6. That information is shown on Exhibit 502. At page 452 of the record we were requested to show whether or not the roads listed on Exhibit 12, at page 16, serve plants other than those owning them, and under what authority the trunk lines assess demurrage against the industries (Tr. 4505). A communication was addressed to the connections of these roads and the information requested is in Exhibit 502. The tariff does not authorize a trunk line to assess demurrage against industries on a short line connection unless the short lines are plant facilities. The tariff revenue at the top of page 17 of Exhibit 502 would not authorize the trunk line to assess de-[fol. 933] murrage against industries on the short lines if they are common carriers. If they do it under those conditions, I think it would be contrary to the tariff. (Tr. 4506). I don't know whether they are doing it or not, but if those roads are common carriers there is no tariff authority under which the trunk lines can assess demurrage against industries on the common carrier connections. The roads on page 17 of Exhibit 502 were reported to me as being plant facilities. At page 456 of the record we were asked how many roads shown in Exhibit 12 tried to subscribe to the Per Diem Agreement of the American Railway Association and were refused (Tr. 4507). We have examined the record since 1914 and find that 18 railroads made application, which applications were rejected, held in abeyance or withdrawn. In the same period 257 applications were approved. One application was rejected pending a determination of the status of the road as a common carrier. 11 applications were held in abeyance pending the decision of the Commission in this case (Tr. 4508). One application was rejected because the road was more than 6 months in arrears for car hire. One application was approved but

not executed because the applicant refused to sign unless allowed reclaim on cars handled under divisions of joint rates. One application was rejected because the road was in arrears for car hire. One application was held in abeyance pending settlement of outstanding car hire accounts. Two applications were rejected because the roads were not eligible at that time (Tr. 4509). I am not familiar with the Aliquippa & Southern Railroad, but understand that the Bay Terminal, the Benwood & Wheeling and the Chicago & Calumet River Railroad have been declared common carriers. Their applications were not held in abeyance because they were not common carriers. The applications of those roads were filed in 1921, but prior to then the Commission had condemned the per diem and reclaim method of settlement and the applications were held in abeyance (Tr. [fol. 934] 4510). They were held not because of this investigation but because the entire matter of settlement with such carriers was being investigated. The roads filed applications to become subscribers and at that time the Association had asked the Commission to reopen those cases (Tr. 4511). The Pittsburgh, Allegheny & McKees Rocks Railroad application was held in abeyance pending the decision by the Commission, although that road was declared to be a common carrier in 1917 or 1918 (Tr. 4512). Ever since the matter of car hire settlement with industrial roads first came up there has been constant agitation of the subject either in formal complaints to the Commission or in negotiation. After some of the decisions had been made, the Secretary of the Commission wrote me and asked me if the American Railway Association would extend the same basis to other industrial carriers without the formality of a proceeding before the Commission. That is the sort of agitation I referred to. I answered the Secretary's inquiry by saying "No" because we did not think the rules were right and that the orders ought to be reasonable, that if the roads were common carriers they ought to be permitted to come into the Per Diem Rules Agreement (Tr. 4513). At page 420 of the record it was indicated that the Androscoggin & Kennebec had made application for admission to the Agreement and been rejected. I find that in October, 1922, the General Secretary of the Association received a request from the General Freight Agent of that road for the necessary application blanks which were furnished on October

19, 1922 (Tr. 4514). While some further inquiry was made, the Androscoggin & Kennebec never filed a formal application. At page 1932 of the record it was said that the Marinette, Tomahawk & Western was advised by the Association not to become a subscriber. We find that this advice was not given, but that on January 10, 1924, I wrote the [fol. 935] representative of that road saying that I saw no reason why his company should not become a subscriber, as it would give it an opportunity to get switching reclaim on terminal switching. I suggested that he communicate with the General Secretary who would furnish him with blanks and offered to do anything I could in the matter.

Exhibit 13 is a statement showing the method of settlement of car hire with electric lines (Tr. 4515). Since that exhibit was put in a number of changes have been made (Tr. 4517). In practically all cases where the interchange amounts to anything with electric lines, the line is either a subscriber to the Agreement or makes settlement in accordance with Per Diem Rule 6. In cases where the rule is not enforced, the direct connections advise that this is because in many cases the electric line is not a railroad (Tr. 4518) but is nothing more than a street railway which occasionally receives a car as agent for the consignee; that in many cases the only interchange is of company material for the electric line which is treated as consignee; that in some cases the electric lines refuse to pay per diem and the present arrangement is a temporary one pending the outcome of this case. In one or two instances the only cars interchanged were consigned to city departments by arrangement with which the trunk lines collect demurrage from the city on the theory that the electric line is the agent of the consignee (Tr. 4519). I suppose that where the street railway acts for a consignee it would act in the same capacity as a drayage company would in hauling the freight from the railroad to the industry. The trunk line assesses demurrage against the industry. It sometimes happens that the street railway does not hold themselves out to be common carriers. I have made up a corrected Exhibit 13 which reflects the changes to which I have referred.

(Said document received in evidence as Exhibit No. 503; [fol. 936] it is reproduced at the conclusion of this narrative of evidence).

The Modesto & Empire Traction Company, on sheet 2, was reported to me as an electric line (Tr. 4520). At page 365 of the record Exhibit 14 was withdrawn and a corrected exhibit was to be furnished. I have prepared such a corrected exhibit, it being a summary of all roads, showing the subscribers and nonsubscribers, those industrially owned and those non-industrially owned, together with the basis of car hire settlement, miles operated and freight cars owned.

(Said document received in evidence as Exhibit No. 504; it is reproduced at the conclusion of this narrative of evidence.)

The exhibit shows that 1409 railroads subscribe to the Per Diem Agreement and own a total of 2,628,923 cars, more than 99¾% of the total freight car ownership of the United States (Tr. 4521). These roads operate 312,000 miles or nearly 98% of the total railroad mileage. The statement shows that 1661 railroads settle car hire in accordance with per diem rules and that only 41 independently owned steam roads do not make settlement under those rules; 147 industrially owned steam roads have a different basis of settlement. Exhibit 10 shows a copy of the per diem rules in effect March 1, 1927. At page 463 of the record we were requested to put in the original per diem rule with all changes to date. We have prepared such a statement.

(Said document received in evidence as Exhibit No. 505; it is reproduced at the conclusion of this narrative of evidence.)

This exhibit also includes the switching reclaim rules with changes to date. Since March 1, 1927, changes have been made in Per Diem Rules 5, 13 and 14, and in the Code of Switching Reclaim Rules (Tr. 4522). To show that these changes have been made, I have the circulars issued and also the circulars announcing the result of the letter ballot.

(Said document received in evidence as Exhibit No. 506; it is reproduced at the conclusion of this narrative of evidence.)

At page 1390 of the record we were requested to put in [fol. 937] the record the decisions of the Arbitration Committee. I have secured those decisions.

(Said documents received in evidence as Exhibit No. 507.)

At page 1401 of the record inquiry was made as to whether the right to make reclaim required agreement between all roads concerned at any point. In Arbitration Case 92 the right of a switching road to reclaim is established (Tr. 4523), that case being shown on page 343 of Volume 1 of Exhibit 507. Per Diem Interpretation No. 5 (j) outlines the procedure to be followed to establish reclaim where the roads cannot agree, the interpretation being shown in Volume 2, page 618 of Exhibit 507. At page 477 of the record, we were requested to furnish a statement of departures from the per diem rules as between subscribers. The information was secured by questionnaire which was forwarded to each subscriber in a circular which I have with me.

(Said document received in evidence as Exhibit No. 508; it is reproduced at the conclusion of this narrative of evidence).

A complete statement of the replies received has been prepared (Tr. 4524).

(Said document received in evidence as Exhibit No. 509; it is reproduced at the conclusion of this narrative of evidence.)

These replies were received from all subscribers to the agreement in the United States and the arrangements on Exhibit 509 were reported by only 59 railroads. Many situations in the exhibit are not departures from the rules. This is true of arrangements reported under per diem Rule 5 and the reclaim rules, because those rules are subject to changes required to meet local conditions. It is also true with respect to per diem arrangements between system lines and those reported under operating agreements. These arrangements are not departures from the rule and are included only to make the statement complete. At page 469 of the record we were requested to put in the record a list of subscribers to the Interchange Agreement (Tr. 4525).

(Said document received in evidence as Exhibit No. 510).

Exhibit 508 is the circular which the Association sent out [fol. 938] asking subscribers to report departures and Ex-

hibit 509 shows the replies. Many of the replies relate to practices which are not departures from the rules. It evidently indicates that the carriers themselves regarded them as departures because they reported them, and it may be possible that there is some misunderstanding either of what the rules require or what the circular requires (Tr. 4526). There is evidently more of a misunderstanding as to what was meant by a departure for if there had not been a misunderstanding the arrangements under Per Diem Rule 5 would not have been reported (Tr. 4527). In connection with Exhibit 510, I direct attention to Interchange Rule 113 which has a direct bearing on responsibility for a car damaged or destroyed on the tracks of a non-subscriber. The Birmingham Southern Rules prescribed by the Commission do not cover this point, and under these rules responsibility for settlement with the car owner for damaged or destroyed cars is transferred from the industrial road to the trunk line connection. To subscribe to the Per Diem Agreement a road does not have to subscribe to the Master Car Builders Interchange Agreement, but a road must subscribe to the Per Diem Agreement (Tr. 4528). The Illinois Northern, Pullman and Chicago Short Line voluntarily subscribed to the Interchange Agreement. At page 463 of the record we were requested to put into the record a copy of the car service rules.

(Said document received in evidence as Exhibit No. 511.)

Rules 1 to 5 of Exhibit 511 are part of the per diem rules under Per Diem Rule 3 and the switching reclaim rules are part of the per diem rules under Per Diem Rule 5 (Tr. 4529). At page 2226 of the record we were asked to put in the record a copy of the reclaim rules in effect at Kansas City and Denver.

(Said documents received in evidence as Exhibits No. 512 and 513.)

Per Diem Rule 5 provides for two methods of reclaim on terminal switching cars; first, an arbitrary number of days, [fol. 939] determined by a check of the records, which is the plan generally followed; and, second, the actual plan of reclaim which can only be made effective by unanimous agreement of the roads concerned in any local territory and which contemplates settlement of reclaims on actual time

involved in handling the cars during the month subject to an agreed maximum of days on any one car (Tr. 4530), the reclaim on pick-up and diverted cars to be determined by a plan to be agreed upon, and the total reclaim for any month not to exceed an average of 5 days per car. The second plan is applied at Kansas City and Denver. This plan was put into the rules to recognize a practice which has obtained for some years at some points on the Missouri River and west thereof. It may be applied without difficulty where trunk lines switch cars for each other and where most cars are returned to the road haul carrier from which they were received, but is not adapted to a situation where cars in terminal switching service are diverted to road haul local switching or intra-terminal switching service. The plan could not be applied at Chicago nor to industrial roads which use many cars in local service or where switching lines use a large number of cars in intra-terminal switching as accurate records on each individual car could not be obtained (Tr. 4531). The exceptions to the reclaim rules shown in Exhibit 509 show that hard and fast reclaim rules which will meet every local condition cannot be made. The different conditions require a different treatment. For this reason the reclaim rules are subject to such changes as are necessary to meet local conditions, and roads directly interested in any switching district may agree to changes made necessary by local conditions if the agreement is unanimous. That refers to agreements between subscribers, but the rule does not deal with nonsubscribers. It would apply to an intermediate reclaim such as that Mr. O'Brien testified to at Kansas City (Tr. 4532). His road and all other roads there involved would have to concur in [fol. 940] the reclaim plan to make it effective. That intermediate reclaim had already been provided for by general rule of the Association and was not an instance where unanimous consent was required. It was a majority proposition. The rules apply without exception unless there is a unanimous local agreement to an exception. They must all agree if they have an exception to the rule (Tr. 4532). The difficulty of making reclaim rules to meet every local condition would be true whether the roads were subscribers or non-subscribers. At page 2437 of the record the Salt Lake & Utah complained against the switching reclaim rules and

an investigation was made of this situation. In 1925, the Oregon Short Line paid the Salt Lake & Utah reclaims on 45 cars amounting to $153 and collected from the Salt Lake & Utah reclaim on 2200 cars amounting to $7,384. In 1926 it paid the Salt Lake & Utah reclaim on 33 cars amounting to $110 and collected reclaim on 2,548 cars amounting to $7,553. In 1925 the Denver & Rio Grande Western paid the Salt Lake & Utah reclaim on 143 cars amounting to $456 and in 1926 reclaim on 91 cars amounting to $387, and made reclaim against the Salt Lake & Utah in 1925 for 475 cars amounting to $1,788, and in 1926 made reclaim on 585 cars amounting to $1,648 (Tr. 4534-5). The reclaims were made and allowed under Per Diem Rule 5 under which settlement is made on an actual time basis. The reason the amount of the reclaim varies on each car is because the time required to switch is different on each road. The Salt Lake & Utah did not receive as much money in reclaim as it paid because it only switches a few cars and many cars are switched for it by its connections. Apparently the industries are principally located on the Oregon Short Line and D. & R. G. W. I do not understand that the Salt Lake & Utah is being penalized. It pays $9,000 more in reclaim, but it should do that as the other roads are switching the cars for it (Tr. 4536). It is getting that much more in service. If it was not a subscriber, I do not know that it would save that amount. The rules do not cover the mat-[fol. 941] ter of payment of reclaim by a nonsubscriber to a subscriber, but I would say that the nonsubscriber would not expect to take reclaim. If the Salt Lake & Utah was a nonsubscriber it would not be proper for its connecting subscriber to allow the reclaim on terminal switched cars (Tr. 4537). If it were a nonsubscriber and did most of the switching the rules do not provide a reclaim for it. Exhibit 15 was a statement of industrial subscribers with the reclaim allowed each, and at page 412 of the record we were requested to submit the dates of the checks prior to the ones which resulted in the establishment of the reclaims shown. I have prepared such an exhibit showing the period checked and the result of each check and the effective date of the reclaims allowed (Tr. 4538.)

(Said document received in evidence as Exhibit No. 514.)

The Union Railroad, on page 2 of Exhibit 514, is the Union Railroad of Pittsburgh. As stated, the Commission criticized the previous per diem and reclaim method of settling car hire with industrially owned switching roads. The American Railway Association, therefore, decided that the roads should not be permitted to execute the per diem agreement unless their reclaims were determined by a periodical check of the records under the rules of the Association. There are, therefore, no exceptions to our rules so far as the industrial switching roads are concerned. If these industrial roads are now required or permitted by the Commission to settle under the per diem rules, their reclaims should be determined under our rules, under proper supervision and without any exceptions (Tr. 4539). In Chicago there is an exception, allowing roads performing intermediate switching service an arbitrary reclaim of one day on each car. This is contrary to the rules which provide that an intermediate switching line is only entitled to reclaim when per diem accrues on cars handled in intermediate switching service with a maximum of one day. [fol. 942] The rules contemplate that the line will be made whole but will not make a profit. In many cases no per diem accrues while cars are handled in this service by the switching line, and an allowance of one day arbitrary reclaim permits the switching line to receive in reclaim more per diem than it pays. Therefore, if the Birmingham Southern rules are rescinded and settlements required under the per diem and reclaim rules, the roads in Chicago should fix a method by which only that per diem which accrues on intermediate switching is reclaimed. This could be accomplished by a check of the records to determine the number of days representing (Tr. 4540) the average time required by each switching line. I am referring to any intermediate line and to the fact that if the industrial roads come back under the per diem rules what I have said ought to apply to them and all Chicago roads. The Belt Railroad and B. & O. C. T. get an arbitrary of one day reclaim on intermediate switching. I previously stated that a switching road originating traffic which is loaded and unloaded in the same switching district should provide their proper proportion of cars used in the traffic or should pay per diem without reclaim (Tr. 4541). There was disagreement with

this statement at page 1140 of the record and Circular D II-231 was cited. I have that circular here.

(Said document received in evidence as Exhibit No. 515.)

The circular provides for a uniform method to cover the furnishing of equipment in switching service and imposes an obligation on carriers to furnish cars to industries on switching lines for road haul service. There is also an obligation under car service rules to use foreign cars for loading in the direction of home. The purpose of the circular was to bring about a uniform method in ordering and furnishing cars to be moved in accordance with car service rules. The circular does not impose any obligation upon the trunk lines (Tr. 4542) to furnish equipment for local or [fol. 943] inter-terminal service and the trunk lines do not want their cars in this service during periods of shortage. If switching lines use foreign cars they should pay per diem without reclaim. The purpose of the circular was to establish uniformity in the distribution of freight cars for loading and switching service and define the obligations of railroads with respect to car supply. It was the intention that the rules should apply to all roads performing switching service, whether they were trunk lines or switching roads. The obligation to furnish cars in switching service arises not only when there is a failure to furnish cars due to shortage but also when the switching line uses its own cars for loading without giving the outbound road haul carrier an opportunity to furnish cars. The loading of cars outlined in the circular is in accordance with the car service rules. On page 472 of the record we were requested to furnish a statement showing the result of the letter ballot vote on Per Diem Rule 6, paragraph (b). I have the result of the vote in A. R. A. Circular 2265 (Tr. 4543).

(Said document received in evidence as Exhibit No. 516; it is reproduced at the conclusion of this narrative of evidence).

I thought that this exhibit was what was wanted (Tr. 4544). Since the date of the exhibit no canvass has been made among the members of the Association to determine whether or not they are in favor of a continuance of the rule. This is the only vote that has been taken on it. The machinery of the Association provides a method whereby members who

disapprove a rule can bring it up, but no action has ever been taken by any member with respect to Rule 6 (b). Since it was adopted no subscriber has ever questioned this rule. If they wished to question it they could file a letter or a complaint or propose a change or cancellation (Tr. 4545). So far as I know, no subscriber to the Per Diem Agreement has ever asked that the continuance or discontinuance of Rule [fol. 944] 6 (b) be considered. Those matters are handled through the division of the Association of which I am chairman. Under the decision of the Commission at 78 I. C. C. 475, the Bay Terminal, Chicago Short Line, Illinois Northern, Lakeside & Marblehead and Manufacturers Junction do not pay per diem on foreign cars which they use but recieve per diem on their own cars while they are used by other lines. The Bay Terminal owns 309 cars, the Chicago Short line 125 cars, the Illinois Northern 69 cars, the Lakeside & Marblehead 15 cars and the Manufacturers Junction 37 cars (Tr. 4546). All these cars are interchanged with other roads. The roads named, and which receive per diem on their own cars while paying no per diem, or practically no per diem, on cars of other roads, are not subscribers to the Car Service Rules which generally cover the matter of handling and use of freight cars. The trunk lines using the cars of these roads and paying per diem to their owners have the alternative of either handling them under car service rules voluntarily, although the owning road is not obligated to observe the rules, or of handling them on owner's instructions, as privately owned cars are handled (Tr. 4547). The cars of these roads appear to have the status of private cars so far as use and movement are concerned and per diem cars so far as the obligation of the trunk lines to pay for them is concerned. There are no rules to cover these cars at all. They move around without car service rules. The cars of these lines consist of tank cars, box cars, gondolas, flat cars, ore cars and coke cars. I presume that they are used by whatever line they are on, but there are no rules to cover it (Tr. 4548). If a Manufacturers Junction car gets off our rails there are no rules which would apply to it except the order of the Commission that the trunk lines shall pay per diem on it. If it is on the New Haven it is not subject to any car service rules or any rules that I know of. The order of the Commission at [fol. 945] 78 I. C. C. 475 did not cover the ground covered

by Rules 1 to 5 of the Car Service Rules. Several short lines that have testified in this case and who own freight cars wish to receive per diem for the use of their cars by foreign roads without becoming subscribers. Other roads that had subscribed to get per diem announced they would withdraw if they can get the per diem without being a subscriber (Tr. 4549). Nothing in the per diem rules covers the question, but there is a standing resolution of the American Railway Association recommending that subscriber roads pay to nonsubscribers for the use of their freight cars the same mileage rates as are paid for the use of cars of private ownership of similar class. This recommendation, so far as I know, was unanimously followed until the Commission's decision at 78 I. C. C. 475. The reason for this resolution was to provide an incentive to all common carriers to subscribe to the Per Diem Agreement; to prevent the payment of per diem on private cars (Tr. 4550) which might belong to a plant facility railroad not a common carrier, and in which cases the payment of per diem would be a rebate to the controlling industry. The question of the most economical and efficient method of handling two and one-half million freight cars moving freely over 300,000 miles of railroad is one of great magnitude. The rules must be harmonious and free from conflict, and there must be standard rules if law and order is to be maintained in the handling of cars. Up to now these rules have been provided by the American Railway Association and the entire body of railroad equipment is part of practically one system. The cars move freely from one road to another and must be handled under uniform rules which are fair to owners and users. The rules should also require correct and simplified car accounting and an incentive for the prompt movement of cars. The large percentage of cars on owner's rails during the past years is one direct result [fol. 946] of the present rules. Railroads are thus able to meet the demands of shippers, and cars are available for the traffic for which they were built (Tr. 4551). The Association has made a continuous effort to have eligible roads subscribe to the Per Diem Agreement and had to furnish an incentive for all roads to join. That there has been an incentive is demonstrated by the fact that practically all railroads owning interchangeable freight cars have subscribed. If a road which owned such cars is permitted to

receive per diem for its cars without assuming the obligation to join the agreement, a great many roads will withdraw from the agreement. The Commission cannot say that certain roads are entitled to receive per diem on their cars without extending the privilege to all roads similarly situated, and even if the privilege was confined to industrially owned roads, there are 45 of them which are subscribers and which own about 30,000 interchangeable freight cars used in interchange service (Tr. 4552). As shown in Exhibit 502, a number of industrial roads are treated as plant facilities and are not shown in the list of common carriers published by the Commission. One requirement for admission to the Per Diem Agreement is that the road must be a common carrier, and it is not admitted until its status is determined. If a road is not a common carrier and owns cars which are interchanged, those cars should be settled for the same as if they were privately owned. Such cars are settled for on a mileage basis and when empty are moved on instructions of the owners. The loaded and empty mileage is equalized and if not equalized the owner must pay for the excess empty mileage at the established rate, and refund the mileage allowance paid on such empty mileage. A subscriber is entitled to earn per diem on its cars on foreign lines, and is obligated to make separate reports, separate records and separate settlements with the owners of freight cars (Tr. 4553) which it uses. A nonsubscriber common carrier is in the same position as a subscriber with [fol. 947] respect to being able to obtain per diem for the use of its cars and the conditions are no different from those imposed on all other common carriers. An obligation on a road to subscribe is not unreasonable, since the same conditions for obtaining per diem payments are imposed on all other carriers and no good reason appears why the burden, in so far as cars of nonsubscribers are concerned, should be imposed upon another carrier in addition to the latter's obligations. If a nonsubscriber finds it more economical to accept compensation at the mileage rate and prefers to do that rather than assume the obligations which is the condition of obtaniing the per diem rate it has that right. One of the conditions under which a carrier is permitted to remain in the per diem agreement is that it shall meet currently its per diem obligations, and those roads which do not meet them are liable to suspension. Some have been

suspended in the past (Tr. 4554). Obviously a road which does not pay per diem for the use of foreign cars should not receive per diem for the use of its cars, and if such a condition existed it would tend to break down the entire per diem structure. Since uniformity is essential in interchange handling and settling for freight cars, such cars must be adapted for interchange in accordance with the interchange rules; must be suitable and available for general service on the rails of other carriers; the owner must be a common carrier and not a plant facility; the owning road, if it receives per diem for the use of its cars should be required to pay per diem in accordance with the rules for other cars; the cars should be subject to car service and per diem rules with respect to interchange, use, settlement and accounting, and the owner should comply with the interchange rules and assume responsibility under them for cars repaired and destroyed on its rails (Tr. 4555). These principles lead to the conclusion that before a road should be permitted to collect per diem it should be required to exe-
[fo. 948] cute the *the* per diem agreement. Complaint has been made of the requirement of Rule 6 preventing the payment of reclaim to a nonsubscriber. The purpose of the rule is to bring about uniformity in handling and settling for cars and provide an incentive for roads to become subscribers to the agreement. By subscribing a road assumes the obligation to pay per diem to owners, to make interchange reports and keep a proper account of cars. It then has the advantage of receiving reclaim on cars in switching service. A nonsubscriber performing this service can get reclaim the same as a subscriber (Tr. 4556) and the conditions under which it can be obtained are no different than those imposed on other roads; namely, by subscription under which it keeps separate reports and accounts and makes separate settlement. A road cannot expect to receive the advantages of the rules without assuming the obligations under them, and if nonsubscribers were permitted to receive reclaims there would doubtless be a wholesale withdrawal from the agreement which would result in confusion and impose upon a few roads the obligation of maintaining and applying the rules. The Commission apparently condemned the reclaim plan with industrial switching roads because they might make a profit out of it.

That part of the reclaim rules, however, has been corrected by the adoption of the revised reclaim rules which are a part of Per Diem Rule 5 and have operated fairly both to road haul and switching lines (Tr. 4557). The road haul carrier is protected as the reclaim does not exceed the actual average time required by the switching line to handle cars in terminal switching service, and the switching line is protected since it can demand a reclaim which reimburses it for the per diem it pays while the cars are in terminal switching service. The rules are based upon the principle that to receive reclaim a switching line must pay per diem direct to the car owner and if it receives reclaim without such payment the arrangement would lead to abuses and [fol. 949] result in what the Commission condemned in the case of the industrial switching roads. Some roads perform terminal switching for other lines and also handle cars in road haul service which are handled by other roads in terminal switching service. If they receive reclaim on cars switched for other roads they should pay reclaim to roads which switch cars for them, and all reclaims should be determined under the rules (Tr. 4558). I have already given reference to the cases before the Commission in which the reclaim rule was condemned. The Northhampton & Bath and Birmingham Southern are cases of that sort. I had in mind specific cases applied to specific roads. Under the National Demurrage Rules empty cars at mines for loading and cars under load at mines (Tr. 4559) are exempt from demurrage rules and are subject to car distribution rules under which car detention at mines is dealt with more effectively than by demurrage rules. I refer to the Coal Car Distribution Rules which I think apply during periods of surplus. I do not know whether they are uniform all over the country. In the principal coal producing districts the application of demurrage instead of car distribution rules might produce car delay rather than efficiency. Under the distribution rules car supply can be regulated so as to minimize delay. Average detention to cars at mines is so small that if demurrage was applied with the distribution rules no demurrage would be collected because of the cars which would earn credits under the demurrage average agreement. I base that statement on records obtained from important coal roads and the car service division (Tr. 4560). I have not checked the records of small roads and it would surprise me to know that cars are held there as long as 6 months.

Applying demurrage under these conditions would greatly increase the accounting without securing more prompt release of equipment. Holding unbilled coal free of demurrage, at other than mines or mine sidings, is not permitted [fol. 950] under the tariff. I do not know whether or not that is being done. I have heard that some coal roads are holding coal removed from mine sidings without demurrage but do not know what the facts are. The rules do not exempt unbilled coal from demurrage except when held at mines or mine sidings (Tr. 4561). To permit a short line owning no equipment to use and detain foreign cars without charge would give it an advantage over other roads. Many short lines own coal cars and as subscribers collect per diem for the use of them by other roads. The Pittsburgh & West Virginia, Sandy Valley & Elkhorn, Cambria & India, Cumberland & Pennsylvania, Interstate, Montour, Chicago & Illinois Midland, Buffalo Creek & Gauley, Pittsburgh & Shawmut, Huntington & Broad Top Mountain, St. Louis, Troy & Eastern, Litchfield & Madison, Lake Erie Franklin & Clarion, Kanawha Glen Jean & Eastern, St. Louis & O'Fallon, Cumberland & Manchester and Campbells Creek own 26,920 coal cars (Tr. 4562). I do not think it would be desirable to assess demurrage at coal mines in periods of car surplus, as the Car Distribution Rules properly applied furnish the best way of dealing with car delay at mines. Perhaps penalty rules do not apply during periods of surplus but I understand there are rules which prevent undue delay at mines during periods of surplus as well as shortage. I am not familiar with the details of the regulation. Ordinarily a mine cannot get a car placed in excess of its rate of capacity, but I do not know that the practice during periods of car surplus is to give a mine as many cars as it wants, even though it exceeds the rated capacity (Tr. 4563). It would be unfair to relieve the roads I have named from paying car hire on foreign cars but permit them to receive per diem for the use of their cars, nor could settlement turn upon whether or not the short coal road owned interchangeable coal car equipment. Many short lines have contended that because demurrage is not collected for every day they should not be required to pay per diem. The great majority of cars are released by shippers and consignees in [fol. 951] the first day of free time and many are released before free time starts under the demurrage rules. This is

illustrated by the credits earned under the demurrage average agreements. Demurrage charges do not and were never intended to offset car hire. They are in the nature of penalty charges to prevent delay to cars by shippers and consignees, and the service rendered by carriers for freight charges do not include the use of cars for storage purposes by shippers or consignees (Tr. 4564). In 1925 Class I roads collected $20,391,640 in demurrage and in 1926 collected $21,903,157. On the cars owned by the roads collecting this amount, the amount earned in demurrage was about 2½c per car per day. Car hire between railroads has no relation to the demurrage rules which govern detention to freight cars when held by consignors or consignees. The purpose of the demurrage rules is to promote car efficiency and they allow a railroad's patrons a reasonable time in which to load and unload in consideration of the freight rate. If a shipper or consignee holds a car longer than a reasonable time he is penalized by demurrage and the fact that 2 days' free time is allowed under the demurrage tariff does not mean that all cars are held 2 days. In the majority of cases cars are released before the first day of free time expires and thousands are released before the free time starts. A railroad assumes a tariff obligation of performing a transportation service not covered by the demurrage rules. It receives cars from connections at interchange points and delivers to connections at those points. It assembles and classifies cars (Tr. 4565). It switches cars to and from team tracks and industrial sidings, and it is presumed that these services create an expense which is considered in fixing the transportation charge which the shipper has to assume. The time required to perform these services varies (Tr. 4566), depending on the character of the service and [fol. 952] the facilities of the railroad. If a road does not provide the facilities it cannot expect another road to provide them without proper compensation. There is no more reason why a short line having a short haul should be relieved from the cost of using another road's cars than there is in permitting it to obtain the free use of other facilities with which to perform service under its tariffs. It could be just as well claimed that the connections should furnish locomotive rails and buildings. If a road desires to be treated as an industry with respect to car hire it should be treated as an industry in all respects, but if it is a common

carrier it should get common carrier revenue and assume common carrier obligations. Some short lines have advocated a return to the mileage system of car hire, but Mr. Hale condemned the method and referred to some evils in the plan and supported my previous testimony that the mileage system was unsatisfactory because there was no check against accounts, no incentive to handle cars promptly (Tr. 4567) and not sufficient compensation to reimburse a car owner for its investment in and cost of maintaining cars. Private cars on which mileages are paid should not be settled for on a per diem basis, as it is difficult to establish when a private car is or is not in railroad service. While standing on shipper's or consignee's tracks no payments accrue and private cars are generally moved on owner's instructions, while empty railroad cars are moved in accordance with the car service rules. The mileage system on private cars is discussed in the decision of the Commission in 50 I. C. C. 652. No mileage plan of settlement for cars of railroad ownership could be established which would uniformly and sufficiently reimburse car owners for the cost of owning a car. Furthermore the plan could only be applied when the car is in motion and does not cover all time when it is in use. Under it cars could be held for [fol. 953] loading indefinitely without payment and the owner would be deprived of the cars and receive nothing for it. It would also create serious difficulties in proper methods of car distribution (Tr. 4568). There could not be different rates of payment varying with the ability of the owner or user to efficiently or uniformly handle cars, so that an owner would not in all cases receive compensation for the cost of ownership. The miles per car per day vary so greatly on different cars, commodities and with the service by each road that a return to the mileage system would mean greater evils than existed under the plan in effect prior to 1902. It was suggested at page 541 of the record that the per diem rules be filed as a tariff. A departure from the rules under those circumstances would be a violation of the rule (Tr. 4569), but it would not be a violation of the law to file them as tariffs. It would be impractical to file the rules as a tariff. Per Diem Rule 5, paragraph (g) makes the reclaim rules a part of the per diem rules, and under the reclaim rules there are a number of exceptions made necessary by local conditions. Per Diem Rule 9, paragraph

(e) provides that Car Service Rule 6 shall govern the delivery of cars and that rule makes the receiving road responsible for the car and per diem after receipt of proper data for forwarding until accepted or returned to the delivering road (Tr. 4570). There are many local agreements with respect to interchange and the varying conditions under which interchange is made makes it impractical to have a hard and fast rule. Per Diem Rule 14 provides for reclaim of per diem on a car held by reason of railroad error, unless otherwise agreed. Per Diem Rule 15 provides for local agreements between roads with respect to time required to make delivery when an interchange track is filled and when it is cleared before midnight but at an hour so late that [fol. 954] the delivering road can not put the cars on the interchange before midnight. Under such system a time cannot be fixed because of varying conditions at different terminals. The rules are not in such form that they could be published as a tariff and it would be impossible to frame them in such a manner as to apply them uniformly without interferring with economical and efficient operation. Per Diem Rule 16 makes the embargo regulations of the A. R. A. a part of the rule (Tr. 4571). Per Diem Rules 7 and 8 refer to the interchange rules and provide for per diem responsibility on damaged and destroyed cars. Per Diem Rule 3 requires that freight cars be handled under Car Service Rules 1 to 5, inclusively, but to file the car service rules as a tariff would make them mandatory and eliminate the flexibility essential in the handling of cars to properly protect shippers. The Car Service Rules are generally satisfactory but their perfect observance is not practical. If filed as a tariff, violation of them would produce penalties. None of the per diem rules mentioned could be applied in the form of a tariff without practical necessity for departures from the tariff which would constitute violations of law. I have prepared an exhibit covering data of the roads for which the Commission prescribed the so-called Birmingham Southern Rules (Tr. 4572).

(Said document received in evidence as Exhibit No. 517; it is reproduced at the conclusion of this narrative of evidence).

The 17 roads shown on the statement in 1925 paid $36,904 for the use of foreign cars. In the same period

the per diem amounted to $1,271,333. Had these roads been operating under the per diem and reclaim rules they would have received $697,702 in reclaim and their net per diem expense would have been $573,631. They, therefore, benefitted under the Birmingham Southern Rules as compared with per diem to the extent of $536,727. These roads have been under the Birmingham Southern Rules [fol. 955] about 4 years, and if 1925 is an average they have benefited more than $2,000,000 in car hire alone, to say nothing of relief from responsibility of owning equipment with which to perform their local service (Tr. 4573). The exhibit was taken principally from the answers to the questionnaires filed by these roads with the Commission and from exhibits in this case. It is compiled from exhibits of record. To get the reclaim allowance, I used the figures in the exhibits representing the average actual time required to switch cars in this period, and assume that in 1925 the reclaim would be equivalent of the average time (Tr. 4574). At page 128 of the record, Mr. Hale said that in some cases switching rates had been increased to do away with reclaim. We circularized all subscribers and found no place where this had been done. The possibility of increasing switching charges and requiring a switching line to pay per diem to the car owner without reclaim has been discussed many times with traffic representatives and they all agree that it is impractical. Reclaims now vary from year to year, depending on the length of time required to handle cars in terminal switching. If the switching charges were changed from time to time to take care of car hire expenses, the charges on each road would have to be changed as frequently as reclaim is changed. The amount the switching rate would have to be increased could only be determined by a check of the records to ascertain the average time required to switch cars, so that if it was possible to increase switching revenue by an allowance sufficient to offset per diem, the accounting now required would then be required (Tr. 4575). If a switching road was allowed more than enough to offset per diem the trunk lines would ask for a check, and if the increase in the rate did not make the switching line whole, it would ask for a check. If switching charges included per diem the charge on each road in the same terminal would be different and carriers in the same switching district serving the same industries would

[fol. 956] have different charges for the same service. For competitive reasons switching rates are generally uniform in each switching district; whereas reclaim is not uniform. Also, where switching charges are not absorbed such a plan would increase the payment made by shippers or consignees. In some cases switching charges are partially absorbed and shippers or consignees would have to assume the unabsorbed portion, so that if switching charges were adjusted to include per diem it would in many cases mean an increase in expense to the shipper or consignee. Another objection to the plan is that thousands of mileage cars are handled in switching service and are not subject to per diem or reclaim (Tr. 4576). The present rules provide for an annual check to determine reclaim, unless otherwise agreed to by the roads in any terminal. We make pretty close to an annual check. It may not be exactly 12 months but it is what might be called annual. Exhibit 514 is representative of the period in which checks are made. Chicago is an unusual situation. We have been trying to get a check there for 5 or 6 years (Tr. 4577). On the roads in Exhibit 514 no check was made between the dates shown, but if a check is not made annually it is presumed that all the roads interested in the reclaim are satisfied that it is fair and proper. If a switching road was not being made whole he could demand a check. If he is not granted a check he can make one of his own and present reclaim on that basis and it will have to be paid. The purpose of reclaim is to make the switching line whole in per diem which it pays on cars switched for a road haul carrier, on the theory that the switching road is acting as a delivering carrier for the trunk line. That would be true on a nonsubscriber if it paid the per diem (Tr. 4578). He can then get it back in reclaim, but he cannot get a reclaim as a nonsubscriber. If a nonsubscriber acts as a terminal road for the trunk line [fol. 957] and pays per diem and is allowed reclaim, he ought to be required to pay reclaim to other roads switching for it and do all the things the other road does. I think that when a road switches cars as a terminal line it acts as agent for the trunk line in performing the terminal service and the nonsubscriber ought to handle it as every other road handles it. If they pay per diem to the car owner they ought to get it back in reclaim (Tr. 4579). We do not allow reclaim to a nonsubscriber and I do not think that a non-

subscriber should get reclaim. There must be some incentive for roads to retain their membership in the agreement. If a road gets the benefits of the rules without assuming their obligations, instead of having 1600 subscribers it will have about 175 Class I roads maybe. If two short line connections of a trunk line are competitors, and one is a subscriber and gets a reclaim and the other is a nonsubscriber and does not get a reclaim, I think the difference in treatment could be justified since the nonsubscriber can get a reclaim by becoming a subscriber. That is not unreasonable. No road ought to be required to wait to become a subscriber (Tr. 4580). The justification for the different treatment is that by becoming a subscriber a road assumes the obligation to pay per diem direct to the car owner, keep proper account of the cars and make interchange reports. A nonsubscriber assumes no obligation with respect to those matters (Tr. 4581). A difference between a subscriber and a nonsubscriber is that the subscriber goes to the expense of settling direct with the car owner while a nonsubscriber does not do that and in some cases does not pay any per diem at all. Some nonsubscribers do not even pay per diem to the immediate connection, although under the rules he should. If a nonsubscriber would assume the obligation to pay per diem and keep a proper record of the cars and pay reclaim to other roads when they switch cars for it (Tr. 4584), I see no objection to having the arrangement [fol. 958] apply to it and under the present rules they must become a member of the per diem agreement (Tr. 4585). I know of no road which performs terminal switching service on a division of the through rate instead of a switching charge with reclaim. If a road performs switching service, it is defined in the tariff as such (Tr. 4586). In Arbitration Case 84, where the Pennsylvania tried to get reclaim from the Louisville & Nashville on cars handled in switching service under a division of the rate, the Arbitration Committee ruled against the Pennsylvania. I would not say those cars were handled in switching service under the rules. It was road haul service as they participated in a through rate. The movement was within switching limits but not at a switching charge. There are very few cases of that sort that I know of in the country (Tr. 4587). So far as I know, there are very few of them. The facts which make it difficult to increase switching charges in the case of a subscriber

to take care of reclaim would also be true in the case of nonsubscribers, but that is only where switching is involved (Tr. 4588). I think that would be true of all roads where you undertake to increase switching rates to cover per diem. When I spoke of the rules permitting agreements in particular districts, by unanimous consent, to suit local conditions, I was speaking of agreements between subscribers with respect to reclaim (Tr. 4589). At page 396 of the record reference was made to roads participating in joint through rates but which do not pay per diem under the Birmingham Southern Rules. The important roads in this category are the Birmingham Southern, Genesee & Wyoming, Lakeside & Marblehead, Moshassuck Valley, Northampton & Bath, Tionesta Valley, and Valley & Siletz. I do not know the amounts of the divisions received by these roads (Tr. 4590). Those roads receive free time under the Birmingham Southern basis.

[fol. 959] Mr. Burchmore: If the Northhampton & Bath is named as a participating carrier in a cement tariff, that might be technically construed to be participating in the through rate, but I would not so consider it, and it makes an entirely different picture than to say that they are participating in through rates.

Mr. Towner: We do not concede that this case (Tr. 4591) has anything to do with rates or divisions, and consequently we do not put that information in.

The Witness: The roads named are parties to tariffs naming joint rates (Tr. 4592).

Mr. Burchmore: The substance of the arrangement is they are merely getting a switching charge, although they are participating in the rates.

Mr. Towner: That goes to the question of the amount they are receiving.

Mr. Burchmore: As to the substance of the thing as distinguished from its form.

Mr. Towner: That goes to the amount they are receiving, does it not?

Director Bartel: That is not in issue.

The Witness: At page 998 of the record a weakness was suggested in the reclaim rules because cars used in local service were excluded in making a check to determine the

average time required to handle the cars in terminal switching service for the purpose of fixing reclaim, and that only cars promptly released from terminal service would be put in local service. Based upon actual experience, the facts are that roads which use foreign cars in local service do not select cars released promptly from terminal switching. This is regulated by the class of equipment needed and its availability to the industry. It has also been found that [fol. 960] where cars are used in local service (Tr. 4593) shippers and consignees use as much time in loading and unloading them as they do on cars in terminal switching. Also, it requires about the same time for the switching line to move the cars from the point where they are loaded to the point of unloading as it does to switch other cars. Frequently a car will be loaded and moved in local service several times before it is returned to the trunk line. If local service cars were included in the check, it would increase the reclaim allowance, as it is impractical to determine, in the case of cars on which terminal switching service and local service is performed, just when the local service commenced. I made a check of an industrial road in 1925 which handled a total of 94,351 cars. The total detention was 246,546 days or 2.61 days per car. 6,817 cars were used in local service for 42,118 days, or an average of 6.18 days per car. Excluding the cars used in local service, the check showed an average detention of 2.55 days per car and reclaim was fixed at that figure (Tr. 4594). That road paid $302,372 in per diem in 1926 and received reclaim of $243,454, making its net car hire expense $58,918. Had it been working under the Birmingham Southern Rules with average detention of 2.61 days per car, I estimate that it would have paid practically nothing for cars used in local service. The figures of the McKeesport Connecting Railroad submitted in this case show that in 1925 that road paid $237 car hire under the Birmingham Southern Rules to handle 78,511 cars in terminal switching. The cars were held 178,178 days or 2.26 days per car. 9,816 cars were used in local service for 30,916 days or 3.14 days per car. Under the per diem rules, the road would have paid $209,094 in per diem and received $178,178 in reclaim. The net per diem expense would have been $30,916. Theoretically it might be possible to put into local service only those cars

promptly released from terminal switching service and thus get the cars for nothing, but practically this cannot be [fol. 961] done (Tr. 4595). In every instance our experience has been that the elimination of cars used in local service has decreased the reclaim period. My thought is that under the Birmingham Southern Rules industrial roads are given a greater preference, if they had any preference, than they received under per diem, and that instead of taking something away from them they have been given much more than they had. The figures that I have cited are taken from the exhibits filed by the McKeesport Connecting Railroad (Tr. 4596). When I speak of local service I mean local or intra-plant service or movements that occur entirely on the line of the short line connection. Some short lines complained because paying per diem caused them additional expense in speeding up cars, indicating that if they were given the free use of cars they could slow down the movement and decrease the expense. The reason for the per diem system was to provide an incentive to keep cars moving (Tr. 4597). Mention has been made of the reduction in time required to handle cars in terminal switching by railroads under the Birmingham Southern Rules. The figures do not show just what the reduction is, and, moreover, a comparison of operating during the time the rules have been in effect and the period prior thereto would not be fair as in the last 4 or 5 years there have been no serious congestions. Cars have been handled regularly and promptly (Tr. 4598) and there have been no serious complaints of cars bunched in transit. Shippers and consignees have loaded and unloaded promptly and the whole transportation service has been improved. It was also suggested that under the reclaim plan movement would be slowed down in order to increase the reclaim allowance. This has not been found to be true in any case. The checks of the Association show a continual reduction in the number of days required to handle cars in switching. I have the figures on 89 subscriber roads whose records have been checked several times in the last [fol. 962] 6 years. These roads switch about 2,856,600 cars a year. Under the last check they required a total of 2,211,492 days to handle these cars and the checks indicate a reduction in the number of days actually required of .77 days per car, which represents enough cars to cover two weeks' loading during the period of peak loading. Allowing free

time to several hundred short lines would seriously interfere with efficient use and impartial distribution of equipment and would also tend to break down the fundamental principles upon which the present per diem system has been constructed. The 89 roads that I referred to switched over 2,000,000 cars in the period since Federal control. The last check compared with the first check made in 1920, showing a reduction. We compared the last check with the check made 4 or 6 years ago, and the reduction was in the number of days. The 2,000,000 odd cars was the average number of cars switched by these 89 roads per year (Tr. 4600). The first check was made in 1920 and the last one in 1926 or 1927. I do not think there were any serious congestions in the 1920 check, as in making checks we do not include abnormal months or periods. I do not say the checks were made in 1920, but they were made since the termination of Federal control and were made under normal conditions. The question of switching reclaims allowed industrial roads has been before the A. R. A. continuously for 16 years, ever since the First Industrial Railroad Cases were instituted by the Commission (Tr. 4601). Almost every conceivable plan of settlement with these roads has been suggested. It was suggested to abolish the reclaim by increasing switching charges to cover per diem, but for reasons I have given the plan was impractical. It was also suggested to provide a flat free time allowance and charge per diem on cars held in excess of the free time and to apply the Birmingham Southern Rules, but for reasons stated these plans were rejected. The actual plan of reclaim was [fol. 963] also suggested under which settlement is made monthly and reclaim allowed at the actual number of days required on round trip cars and an arbitrary on diverted and pick up cars. The plan was rejected because it permitted the switching roads to use cars in local service and include the detention in the reclaim. It is impractical to determine the per diem accruing on cars handled in terminal switching without checking each car and without going to the records to determine the number of days which those cars were used (Tr. 4602) in local service. A switching road usually connects with two or more road haul carriers and cars received from one road are returned to another, which makes it difficult to account for per diem that should be reclaimed against the inbound and outbound road haul

carrier. This system, as applied to industrial roads handling some cars on divisions and others on switching charges, is complicated and the accounting difficulties make the plan impractical. Industrial switching roads perform a variety of switching service, and it is conceded that the charge which they receive for terminal switching is not high enough to permit them to pay per diem without reclaim. Also, they should pay per diem without reclaim on cars used in local service and any plan which permits them to use cars in that service without charge is wrong. After giving careful consideration to all plans, the Committees of the A. R. A. unanimously concluded that the best method of settlement devised up to the present time on all clases of carriers (Tr. 4603) is the per diem and reclaim rules. This view was concurred in by a number of the industrial roads which have been heard in this case. We considered the allowance of free time with per diem thereafter in connection with switching roads and rejected it. It has also been considered in connection with short lines participating in joint through rates and rejected. In many cases 2 days free time might [fol. 964] not be enough if they were performing switching service and entitled to reclaim. We think the best plan is to have them pay per diem and get it back as reclaim (Tr. 4604). We think a short line participating in through rates and handling business not as a switching carrier should pay per diem without free time. I do not know how rules could be made under which free time allowance would turn on the length of haul, the character of the road or the revenues it earns. At page 2102 of the record, the Northeast Oklahoma Railroad raised a question as to the expense of furnishing door protection for ore cars. Rule 30 of the Consolidated Freight Classification, I. C. C. No. 18, provides that a shipper must furnish such doors at his own expense. I have prepared a list of nonsubscribers to the per diem agreement with their mileage (Tr. 4605).

(Said document received in evidence as Exhibit No. 518; it is reproduced at the conclusion of this narrative of evidence.)

Exhibit 518 is a list of 196 steam roads in the United States that do not subscribe to the per diem rules but settle with direct connections for the use of cars at $1 a day with-

out free time or reclaim. It includes roads shown in previous exhibits which did not group them in this form (Tr. 4606). Exhibit 501 listed 301 subscribers that are somewhat similar to some of these roads that subscribe, and shows a total of about 500 roads of this class that settle strictly in accordance with the per diem rules. In Exhibit 518 the miles operated is from the annual reports of the Interstate Commerce Commission and the number of freight cars owned is taken from the Official Railway Equipment Register. I also have a statement showing the percentage of freight cars awaiting repairs as of March 1 for each of the years from 1921 to 1928.

(Said document received in evidence as Exhibit No. 519.) (Tr. 4607.)

The data on this exhibit was taken from the reports of the Car Service Division of the American Railway Association. [fol. 965] I also have a statement showing the freight car ownership of Class I roads as of March 1 for various years, taken from the same source.

(Said document received in evidence as Exhibit No. 520; it is reproduced at the conclusion of this narrative of evidence.)

This exhibit covers interchangeable freight carrying cars, and are the figures reported by the Car Service Division of the Association (Tr. 4608).

Mr. Hartman: At the Chicago hearing information was requested with respect to the division of demurrage as between proprietary industries and non-proprietary industries on the Pullman Railroad. The statement has been prepared which I asked be made a part of the record.

(Said document received in evidence as Exhibit No. 521.)

Mr. Hartman: At the Chicago hearing check was also made as to whether or not the Pullman Railroad was disputing the figures in Exhibit 67. We are not disputing the figures in that exhibit, except in so far as they are shown in Column 3, which deals with the additional cost in connection with the Birmingham Southern settlements for car hire detention (Tr. 4609).

Cross-examination:

The Witness: I don't think that any of my exhibits included a copy of the original form of per diem agreement (Tr. 4611), but I will be glad to furnish a copy for the record. The various Demurrage Bureaus compile records showing the average time cars are held by shippers and consignees over monthly or annual periods. I will be glad to submit copies of the available data we have on that (Tr. 4612). In my testimony yesterday, I made a complete statement on the subject of increasing the revenue of switching roads to take care of per diem and showing that it was impractical to cover the matter in that way. I referred to conversations with traffic officials and the consideration given the matter by our committees. My testimony, I think, expresses the view of all the committees that have ever had [fol. 966] anything to do with it in the Association (Tr. 4613). I recall a check made some months ago at Detroit on the Detroit Terminal, but do not recall the figures resulting from the check. Exhibit 134 is the proceedings of the meeting held at Detroit in January, 1927, at which the check was arranged for. I was present at the meeting and was asked to supervise the check (Tr. 4614). Exhibit 135 is my communication to the Detroit roads on April 20, 1927, advising them of the completion of the check and the reclaims to be allowed each road. The figures in the exhibit were Detroit & Toledo Short Line 3.27 days, Detroit Terminal 3.89 days, Detroit, Toledo & Ironton 4.76 days, Grand Trunk Western 5 days, Michigan Central 5 days, New York Central 3.97 days, Pennsylvania 5 days, Pere Marquette 5 days, Wabash 4.42 days. The Detroit Terminal was permitted to reclaim 3.89 days from each line haul carrier, for which it switched cars (Tr. 4615). It would reclaim that figure, regardless of the detention, on cars received from a particular connection. My figures do not show the average detention on the Detroit Terminal by individual railroads. We check all the cars without regard to those received from or delivered to individual trunk lines. The figure is an average of all cars handled in switching service and record does not show whether or not the Detroit Ter. is losing money on cars received from a particular rail The record does not show detention to cars handled for individual roads (Tr. 4616). I don't know how the informa-

tion could be secured unless a check of it was made. We do not have the information for examination showing the detention on the Detroit Terminal on cars switched for the Pere Marquette, for example, as compared with some other road. We do not check in that way. I do not see how the Detroit Terminal would lose money at all when they get back in reclaim the average per diem they pay out (Tr. 4617). I think the New York Central, Michigan Central and Grand [fol. 967] Trunk jointly own the Detroit Terminal (Tr. 4618). The Detroit Terminal did not advance as a reason for withdrawing from the per diem agreement the fact that its detention was less on cars handled for proprietary lines than on cars handled for other lines. That might make a difference to individual roads but would make no difference to the Detroit Terminal. If an arbitrary reclaim under our rule works an injustice in a local situation, it can be corrected by local agreement between the roads concerned. At Buffalo, for example, an agreement has been made for a separate reclaim on ex-lake grain which moves promptly during the shipping season. If it was included the whole thing would be distorted. That is the kind of an arrangement which our rules contemplate (Tr. 4619). I do not know of any reason the Detroit Terminal could give for withdrawing from the agreement unless they could show that the 3.89 days was wrong. If that figure made them whole, it would not be wrong. That road has not yet given any reason for withdrawing. It is true that for many years the roads at Detroit operated under a 5-day reclaim. I presume the reduction in the reclaim had something to do with the withdrawal of the Detroit Terminal. I think it was making money under the 5-day reclaim (Tr. 4620). They did withdraw. I don't know on what basis they are now settling for cars except that the connections reported that charges were being set up under Per Diem Rule 6. I don't know if they are being paid. We have nothing to do with that as we do not collect money. The New York Central, Michigan Central and Grand Trunk are members of the Car Service Division of the A. R. A. and are proprietary lines of the Detroit Terminal (Tr. 4621). We might find out why the Terminal withdrew by taking the matter up

with the owners. The matter is now under consideration, and I understand it may be adjusted. I don't know why the road withdrew. There would be no objection to the [fol. 968] Detroit Terminal having a reclaim under which it would reclaim from each trunk line an amount equal to the average detention on cars received from and delivered to that line, if the arrangement was agreed to by the interested roads. That would not be a departure if it was agreed to by all interested roads at Detroit (Tr. 4622). I think the per diem rules ought to stay as they are until we find a better way of changing them. I think that rules that have been in effect and are the result of 26 years of consideration and experience are the best that we have been able to find. I do not know that subscribers should ignore the rules in every instance. I put in an exhibit which shows that practically all of the connections of the subscribers that testified were industrially owned roads and our rules do not provide a method of settlement with them. I think our rules should be changed with respect to industrial roads so that the matter will be put on a proper basis (Tr. 4623). I think a proper basis would be to strike out the words in Rule 6 "other than industrially owned railroads" and to rescind the Birmingham Southern Rule and put all common carriers on the per diem basis. In connection with the witness who said he had no nonsubscriber connections against which car hire was assessed under Rule 6 (b), I think you will find it assessed as non-subscriber connections as are all roads in that class. I know nothing about readjustment of rates or divisions. If the words mentioned were stricken out of Rule 6 and industrially owned roads were put on the per diem basis, I think a carrier would be justified in putting such roads on a per diem basis and ought to do so (Tr. 4624). I don't know that it is necessary to have a mandatory order from the Commission. A suggestion from the Commission would be followed by all roads without the necessity of further action. Such a suggestion would have more force [fol. 969] than an agreement voluntarily entered into. The agreement may not amount to much in some cases but in the country as a whole it has amounted to very much. I don't think the situation is bad at all, except with respect to industrially owned or controlled roads. That is where

the roads need a decision which will straighten the thing out. I don't know what would be the dividing line between an industrially owned and a non-industrially owned road. I don't think the distinction makes any difference in car hire (Tr. 4625). If a road is a common carrier it ought to make settlement and handle cars the same as any other common carrier and be subject to the same rules. The Birmingham Southern Rules do not contemplate reclaim but allow free time, under an average arrangement on all cars regardless of whether it is terminal, interterminal or local, or some other service. Under per diem with reclaim they would not get reclaim on interterminal switching, so that the Birmingham Southern Rules grant free time in cases which would not be included in the reclaim period. That is also true of cars used in local service (Tr. 4626). My office compiles each year records showing the cost of owning and maintaining freight cars. I could furnish figures showing the total original cost of cars and total accrued depreciation at the close of 1925, and at the close of 1924, and the number of cars involved. The definition of all different classes of switching, including terminal switching, is shown in the per diem rules which have been introduced as an exhibit (Tr. 4627). On a representative movement of a New Haven car loaded on the Wabash, eastbound, delivered to the Delaware, Lackawanna & Western, at Buffalo, and moved 8 or 10 miles to the East Buffalo transfer, and transferred into other cars, the shipment being handled on a division of the through rate, I do not think that the movement on the D. L. & W. from Black Rock to Buffalo Transfer was a switching movement. Under the per diem rules [fol. 970] there would be no reclaim as it is not terminal switching. They transferred the car but perhaps could have sent it through (Tr. 4629). It may be another matter under the Car Service Rules and the proper handling of the New Haven car. I would not want to express an opinion with respect to an order of the Car Service Division (Tr. 4630). I have nothing to do with issuing those orders. The service in question would not be considered switching service under the per diem rules and there would be no reclaim. The reason that the movement from Black Rock to Buffalo Transfer is not switching is because there is no switching charge involved. There is no movement of the car under

a switching charge to a point in the switching district to be unloaded to another carrier (Tr. 4631). The fact that the car was transferred would make no difference as the D. L. & W. is part of the through movement. The D. L. & W. makes the transfer for themselves. Where a carrier receives a division of the rate under our rules the service is not regarded as switching service. The Galligan tariff governing switching at Chicago is considered as a switching tariff for per diem purposes (Tr. 4632). I assume a road receiving a shipment has the privilege of transferring the traffic at the junction point into its own car, but I do not know of many cases where that is done. I don't see anything to stop it, provided they pay the cost of the transfer (Tr. 4633). My Exhibit 502 is a list of nonsubscriber steam roads which do not subscribe to the per diem agreement. Exhibit 503 is a similar list covering electric roads. The list is made up from reports made by the direct connections of the roads listed. I don't know how many roads have testified in this case, but I know that many of them that did testify wanted relief. I don't know how many roads would drop out of the per diem rules agreement if it were not for the reclaim rule and the refusal to pay per diem to [fol. 971] non-subscribers. I think a good many would drop out if they could get the benefits under the rules without assuming the obligations. I don't know that they are subscribers entirely because they can't get reclaim and per diem on their own cars as nonsubscribers, but I think that is one of the important reasons and probably the controlling reason. All I know about these exhibits is that they were made up from information from the direct connections of the roads shown on the exhibits. I assume it is correct (Tr. 4635).

Mr. Hitt: I have a copy of a statement entitled "American Railway Transportation Division, Joint Committee, Per Diem Rule 6, Summary of replies to circular SV 73", covering settlement for car hire or for use of cars by railroads not subscribers to the per diem rules agreement, being dated Chicago, Illinois, August 26, 1921, which I would like to offer in evidence or have Mr. Crawford check it up and offer one later that he knows is accurate, to show what the situation was with respect to nonsubscriber roads at

that time, as compared with the situation now shown by Exhibit 504 (Tr. 4636).

Director Bartel: Mr. Crawford will check his records, and if the Exhibit Mr. Hitt has tendered is correct, Mr. Crawford will send in a copy for the record together with such statement as the facts will justify (Tr. 4638).

The Witness: I think we should have an opportunity of explaining what the situation was and why it was that way and what action was taken to try and get the thing put on a proper basis.

Mr. Towner: You have that right, as I understand it, under the arrangement we have.

Director Bartel: That is right (Tr. 4640).

The Witness: When I said that the non-payment of per diem on cars of non-subscribers was to prevent a rate re-
[fol. 972] bate to industries owning plant facility roads, I did not mean that the per diem rate was so much in excess of the cost of owning a car that it would amount to a rebate. I meant that the mileage on private cars does not equal the cost of ownership and per diem in most cases amounts to considerably more than mileage. Cars are supposed to earn per diem every day in the year, but private cars do not accrue mileage when they stand idle. Mileage only accrues when the cars move. By paying mileage rates to non-subscribers the trunk lines do not pay on those cars less than ownership cost, but if a short line is a railroad it has the opportunity of getting per diem. The trunk lines are willing to pay all roads a reclaim if they subscribe to the per diem agreement and they have the right to subscribe or not (Tr. 4641). I think that the payment of the per diem rate would amount to a rebate to an industry on cars owned by the industry, even though the cost of owning a car by the industry was $1 a day. This would be so for the reason that other industries who might not own a plant facility road, but which have private cars, would get a different rate for their cars under the mileage plan. I am talking about industries (Tr. 4642). If a coal company owns a private coal car it gets 1½¢ a mile under the mileage tariff, and if the car makes 30 miles a day the mileage earnings are 45¢ a day. If another coal company has a plant facility which is not a common carrier and owns cars, the cars of that company move

as railroad cars and get $1 a day, so that one coal company gets $1 a day for its cars and the other coal company gets 45¢ a day. I think it would make a difference if a coal company owned a common carrier railroad instead of a plant facility. If the railroad is a common carrier and complies with the rules, it is entitled to $1 a day (Tr. 4643). I did not say that if an industrially owned common carrier got $1 a day for its cars there would be any rebate. I said that was so if it was not a common carrier and received per [fol. 973] diem. If it is a common carrier it is proper for it to receive $1 a day per diem, provided it becomes a subscriber and it has the option of becoming a subscriber. An industrially owned railroad which is a common carrier can now get per diem if it is a subscriber. If it was put on a per diem basis, being a nonsubscriber I don't think there would be any rebate to the owning industry (Tr. 4644). If that arrangement, however, resulted in the payment of per diem on cars not belonging to common carriers that might result in a rebate. What I had in mind was that if the rule permitted the payment of per diem on all cars, the railroad, if it wished, could make the payment on all cars whether owned by common carriers or not. The purpose of the rule is to establish uniformity with respect to the payment (Tr. 4645). I see no distinction in car ownership, whether a car is owned by an industry or by a railroad (Tr. 4646). My idea is that if an industry is paid any more than a mileage rate authorized by the tariff it amounts to a rebate. I think that if the Commission indicated that what we have here is the proper rule it would have some effect upon the carriers (Tr. 4647). After the Commission indicated that the cars of an industrially owned railroad, when on the lines of trunk lines should be on the per diem basis, the trunk lines paid those roads, but I don't think it had any effect upon the industrial roads not involved in the case. The Commission suggested that the same rules with respect to car hire be applied to other roads similarly situated and also indicated that the modified Birmingham Southern Basis was in the nature of an experiment (Tr. 4648). I don't think the reasons I gave for not putting privately owned cars on a per diem basis would apply to cars owned by a nonsubscriber common carrier short line. The rule does provide for the payment of mileage on such cars but is optional as the nonsubscriber can get the per diem by subscribing to the rules. The recom-

[fol. 974] mendation of the Association is that the mileage be paid instead of per diem. In dealing with mileage payments on private cars, I make no distinction between cars owned by shippers and cars owned by independent car companies. They are all on the same basis (Tr. 4649). Railroads lease cars from private car companies which have no connection with any shippers at all, by the week, month or year. There is no question of rebates there as it is entirely a different thing. If the railroads lease or rent the cars that is one thing, but if the cars are handled on the trunk lines as private cars the owner gets the same mileage allowance as other private car owners. None of the discussion about rebate applied to cars owned in that way (Tr. 4650). The record will show what industrially-owned roads agreed that the per diem and reclaim rules furnished the best method of settlement of car hire devised up to the present time. I think that the representatives of a number of the roads made the statement that they knew nothing better than the per diem rules. They were roads which as subscribers would get reclaim. We have found no practical substitute for switching reclaim and in my opinion there is none (Tr. 4651). I think the per diem system would be impractical unless a substitute is found for the reclaim plan which would be practical and workable. Not knowing of any substitute, I think the system would not be workable unless we had per diem reclaim, when referring only to the reclaim situation covering cars in switching service. The entire distinction under the rules between switching traffic and line haul traffic is that switching traffic is covered by a switching tariff and line haul traffic is not. Freight tariffs are published under rules and regulations prescribed by the Commission (Tr. 4652). If a road performs a switching service for its trunk line connections and assesses charges at a switching rate, it is entitled to reclaim under the rule, providing the switching service is performed within the limits of a switching [fol. 975] district (Tr. 4653). Where switching service is performed for the trunk line within switching limits and under a switching charge a reclaim is allowed under the rules. For a 10 mile haul, covering a distance outside of the switching district, the rule does not allow reclaim, but if the switching district was extended to cover the haul and the service was performed on a switching charge the reclaim would be allowed. The amount of the switching charge has

nothing to do with it. I do not consider it a discrimination for reclaim to be greater at one point than another (Tr. 4655) or greater as between one road and another at the same point. The per diem system is not perfect and has disadvantages in its administration and application, but I think it is the best plan that has ever been devised. The advantages to everybody in the methods established, I think bring about the efficient and economical operation (Tr. 4656). It is a practical plan and I do not know that it has many disadvantages. I said it was not a perfect set of rules, but as a general proposition it is practicable and has produced good results. I would not concede that that is so as between Class I roads because of the averaging up of disadvantageous and advantageous conditions (Tr. 4657). I think it is desirable to have all short lines subscribe to the rules and operate under the same rules. I see no greater desirability for that in the case of short lines owning and interchanging their own cars than in the case of short lines which do not own cars. It might be more advantageous for a short line owning cars to join, but in the country as a whole the rules ought to apply alike on all roads. I think there are greater advantages to short lines owning cars than to those not owning cars (Tr. 4658). I don't think it is essential to the per diem system that any stub-end Class III short line earning less than $100,000 a year be a subscriber. I think it is desirable that the Class II roads subscribe but I do not know that it is essential. I will furnish the original [fol. 976] and amended forms of the per diem agreement (Tr. 4659). In the case of the figures for the Illinois Northern Railway, shown in Exhibit 517, I arrived at the figure of $32,683 per diem that it would have paid in 1925 in excess of reclaim by taking the total per diem that accrued on the Illinois Northern and allowing it in reclaim the actual average time that it used to handle cars in terminal switching. The $32,683 represents per diem on cars in interterminal and local traffic, a negligible amount being local service (Tr. 4660). A number of years ago the Illinois Northern and other roads in the Chicago district received a reclaim on interterminal cars. I do not know what was done with respect to divisions when reclaim on interterminal cars was abolished. I think my recollection was correct when I said that some of the Chicago roads favored going back to per diem. It may be that they said that if they went back to

per diem they would have to have free time on the interterminal cars or an increase in interterminal divisions, but they also said that they knew of no better plan of settlement than per diem and reclaim (Tr. 4661).

O. E. HALLBERG was called as a witness and, being duly sworn, testified as follows (Tr. 4662):

I am Superintendent of Car Service of the Chicago & North Western Railroad and have been for about 10 years. I have with me the data requested in the Director's letter of January 20th. We allowed no reclaim on cars held on foreign lines for prospective loading of automobiles or grain. In 1927, 393 North Western cars were held on the Burlington for company tie loading a total of 2,892 days, free of per diem (Tr. 4663); 133 of our cars were held on the C. & E. I. for tie loading 852 days free of per diem; 59 of our cars were held on the D. & I. R. for tie loading a total of 351 days free of per diem; 440 of our cars were held on [fol. 977] the B. & M. E. for company lumber loading 3,389 days free of per diem; 477 of our cars were held on the L. S. & I. for company tie loading 954 days free of per diem; 49 of our cars were held on the Soo Line for company tie loading 154 days free of per diem; 305 of our cars were held 3,076 days on the Big Four and 299 of our cars were held 615 days on the P. & E. free of per diem, for company coal loading; 250 of our cars were held on the E. J. & E. for slag loading 48,569 days free of per diem; and 920 of our cars were held on the Illinois Central for company tie loading 5,116 days free of per diem. We held no other cars for loading any other commodities at points off our line. The amount of per diem waived in the cases cited would be the number of days given (Tr. 4664). We have two short line nonsubscriber connections on a basis other than that provided by Rule 6 (b). The Laona & Northern and the Marathan County Railway, owned by the Conner Land & Lumber Company, and the Fairchild & Northeastern Railway, presumably owned by the Foster Lumber Company, settle car hire on the so-called Birmingham Southern basis. It was a voluntary arrangement and resulted from discussions and negotiations. Those roads were satisfied and that is what we gave them. I don't know how long they

have been settling on that basis. We have some nonsubscribers who are settling under Rule 6 (b) (Tr. 4665). The Cazenovia & Southern is one and it is satisfied with that. The Elgin, Belvidere & Rockford, Hillsboro & Northeastern, Marinette, Tomahawk & Western, Mineral Point & Northern and Toma & Toledo are nonsubscribers settling under Rule 6 (b). If they asked for free time, I don't think we would give it to them. We gave it to the first three roads because they asked for it, but I don't know that we would now. Those three roads have been under the Birmingham Southern Rules for some time. We attempted to put them under Rule 6 (b) and the reason we put them on the Birmingham Southern basis was because they asked for it (Tr. 4666). If the other roads asked for similar treat- [fol. 978] ment we would try to persuade them to accept Rule 6 (b) but if they wanted something better, I think we would submit to giving them the Birmingham Southern rules. The three are industrially owned, but I am not sure that the rest of them are entirely industrially owned. I do not think they would be entitled to the Birmingham Southern basis. When I spoke of giving it to them a moment ago, I was referring to the industrially owned roads which now have that basis (Tr. 4667). I do not think we would extend the Birmingham Southern rules to the roads now operating under Rule 6 (b) and which are not industrially owned, nor do I think we would put them on a demurrage basis, for example, or give them 2 or 3 days' free time. I don't know what influences brought about giving free time to one road and not to another. Our attempt is to settle on the basis of Rule 6 (b) and I don't know what we would do if they asked for a change (Tr. 4668). The governing factor would be that we would say that Rule 6 (b) should be the settlement. I don't think we would give them something else as the Great Northern did. I would not give them something else. We would make an effort to collect per diem, and if we did not we would attempt to adjust it through the American Railway Association (Tr. 4669). I don't see that the fact that a road is industrially owned would make any difference, although we might place the balance of the industrial roads on the same basis as the three which now have the Birmingham Southern basis. I would try to argue them out of it, and if I could not do that I don't think we would give it to them. I did not

sanction the giving of the Birmingham Southern rules to these three as it has been in effect for some time. I don't think you could justify treating another road which is also industrially owned on a different basis (Tr. 4670). If other industrial roads asked to be put on the Birmingham Southern basis, I don't think we would take that basis away from the roads that now have it, and I don't think we would give [fol. 979] it to the other roads. I said we could not justify treating industrial roads differently (Tr. 4671) and if we did not put the 3 which are now on the Birmingham Southern basis on some other basis, I suppose we would have to put other industrial roads on that same basis. An industrially owned road is different than a road not so owned because the shippers ship off their own railroads. Rule 6 (b) does not prescribe any basis of per diem settlement with industrially owned roads, I understand, because of the decision of the Commission. I have no information as to whether the giving of the Birmingham Southern basis to these three roads resulted from the Commission's decision (Tr. 4672). Several things are to be taken into consideration in giving different treatment to an industrially owned road than to one not so owned. On an industrially owned road they are the shippers and operate everything on it, but I don't see any reason for a difference in treatment to roads that are not industrially owned and those that are (Tr. 4673). We have no subscribers with which we have departures from the Code of Per Diem Rules. They all settle in accordance with those rules. I think the present per diem rules are rigid enough and that the railroads can and should live up to them. They are the result of study by competent men and seem satisfactory to me. My company is in favor of a rigid enforcement of Rule 6 (b). I think we should increase the tariff allowances of the roads with which we have the Birmingham Southern basis, but that matter does not come within my jurisdiction (Tr. 4674). I think it would be difficult to substitute divisions for switching rates or to increase the switching charges to cover per diem because of different conditions in different territories. I think that reclaim is the better way of handling it. I will furnish a figure showing the reclaim debits and credits on the North Western for 1927. Our cars which were held on foreign lines waiting loading were held in 1927 (Tr. 4675). With respect to the substitution of some other

[fol. 980] method to cover reclaim other than the arrangement that now exists, I agree with what Mr. Crawford said yesterday. So far as I know the Cazenovia Southern is satisfied with the per diem basis and I do not know that it had testified at Kansas City that they were not satisfied, and I am not particularly familiar with the Laona & Northern. I don't think we would be willing to give the Cazenovia Southern a different basis. I did not know that the connecting lines to the Laona & Northern had tried to give it increased divisions and that the Commission would not permit it (Tr. 4676). I do not know that the Marinette, Tomahawk & Western pays no car hire. My understanding was that the Fairchild & Northeastern is controlled by the Foster Lumber Company. I am not familiar with the conditions which surround the individual short lines, but I have conducted negotiations with them on car hire since I have had charge. The Marinette, Tomahawk & Western was doubtless handled by my predecessor and the other Birmingham Southern rules were in effect before I took charge. My controlling thought is that we want to be loyal to the American Association rules (Tr. 4677). I have that thought because I think the rules are right. I don't think that the holding of our cars on foreign lines for prospective loading is a departure from the per diem rules. In speaking of roads owned by industries, it was not my thought that as shippers we wanted to give the shippers some advantage. I overlooked saying that we waive per diem on ore cars held by the L. S. & I. for handling ore to Escanaba. 64 cars were held 64 days (Tr. 4678).

E. T. KENNAN was called as a witness and, being duly sworn, testified as follows:

I am Superintendent of the Pennsylvania and am testifying for that road in response to the Director's letter of January 20th. The Pennsylvania, together with the Pittsburgh & Lake Erie and Baltimore & Ohio, which roads own the Monongahela Railway, allow the Monongahela under a joint arrangement a reclaim on coal cars delivered in ex-
[fol. 981] cess of daily orders for coal loading during periods of car surplus. Orders are received daily from the Monongahela for empty coal cars (Tr. 4679). An effort is made

to deliver empties accordingly, but sometimes excess cars are delivered and to prevent the cost of switching them back the Monongahela takes them and receives a reclaim for the per diem from the time they are placed on interchange track until they are moved to the point of loading. In 1927, the Pennsylvania allowance amounted to $215,330 and covered 79,437 cars. Under this arrangement we can deliver solid trains of empty coal cars to the Monongahela, which results in economy to the parties since it eliminates car handling and expense on the owners of the Monongahela which would be incurred if the trains were broken up to deliver to the Monongahela and then rehandled for delivery to that road. The connections of the road have no yards adjacent to the junction and they utilize the storage facilities of the Monongahela and adjust the per diem accordingly. The Monongahela pays no more and no less per diem under the arrangement than it would pay if the arrangement was not in effect (Tr. 4680). The owning roads are competitive to some extent, but I do not know that that has any effect in giving the cars to the Monongahela. Much of the coal loading is for company fuel. Oher railroads send their cars in there over whatever roads they choose to send them, and they are all in the same pot and are put in the yards together with other cars. If a foreign line send its fuel cars to the Monongahela for a fuel supply, those cars are considered as a part of the entire order of the Monongahela for coal cars (Tr. 4681). The mines notify the coal road how many cars they want and those cars are sent by the different railroads to the Monongahela for the loading. The cars from foreign lines for fuel coal are included in the same pot. A foreign road would not send cars to the Monongahela without orders but [fol. 982] sometimes holidays and things of that sort make it difficult to keep the mine loading. When the mines don't operate for several days that might cause an accumulation of cars (Tr. 4682). That sometimes results in cars being supplied in excess of orders, so that we must either hold the cars on our rails or turn them over to the Monongahela. Under the arrangement the per diem payments of the Monongahela are no different than they would be if the arrangement did not exist. That is the only instance in which we waive per diem on cars. We only have one non-subscriber line which is on a basis other than Rule 6 (b).

The Chicago & Calumet River Railroad is allowed actual time with a maximum of 4 days on inbound loads with 3 days additional on outbound loads. This is a joint temporary arrangement made with that road by all connections in the Chicago district, pending action on the application of the Chicago & Calumet River for membership in the Per Diem Agreement of the A. R. A. I don't know just how long the arrangement has been in force (Tr. 4683). I think the Chicago & Calumet River is industrially owned and it is the only departure of that kind that we have. We have no departures in connection with subscriber lines. In connection with industrially owned nonsubscribers, it is my thought that there is no reason why those roads should not be subscribers. So long as they can become subscribers and obtain the advantages of the agreement, as other lines do, I think they should become members of the Association in order to obtain its privileges (Tr. 4684). The principal benefit they would get would be the reclaim on switching service. They would also maintain records for the purpose of paying per diem and settling for car hire, which in my experience has been a material advantage to many roads that previously did not have good records of car handling. The principal advantage would be the reclaim on switching service. If they received divisions of rates and were not [fol. 983] entitled to reclaim, I don't think they should have free time. A division contemplates cooperative handling of business by two or more railroads and such lines should do as other lines do who handle freight in that movement (Tr. 4685). They should accept their share of the through rates and pay their per diem expense the same as the large lines do. If a line gets its local rate on a line haul charge, that rate represents participation in a through rate and should reimburse them for the service and they should pay their per diem expense the same as other roads do. Their local rate represents what they would have if they participate in the through movement, but I am not qualified to talk about rates as it is not in my jurisdiction (Tr. 4686). I understand that under the Birmingham Southern Rules free time is allowed regardless of the class of service, and that, therefore, it is an improper basis. I think that the getting of free time by short lines is in their own hands. They can get it if they are eligible, become a member of the A. R. A. and elect to join the Association. They can

get exactly the same consideration as other roads. They would not get free time if they participated in the through rate as that would not be switching business (Tr. 4687). The Pennsylvania would spot a car at an industry and allow it 48 hours to load. We turn cars over to short lines for the same purpose. On the shipper served, I do not think we lose 2 days per diem. The short line has to give a shipper on its line the same 2 days' free time, so the shippers are on the same basis. Under the demurrage tariff we get no per diem on a car while it is held by the shipper (Tr. 4688). When we turn a car over to a short line per diem starts the minute it turned over. The shipper on the short line also has 48 hours' free time to load the same as our shipper. There is no difference to the shippers. The only differ- [fol. 984] ence is to the short line, but in the case of an industry on our rails it is an industry, and in the case of the short line it is a railroad (Tr. 4689). In serving an industry on our rails which has 48 hours' free time, we lose 2 days' per diem, but in the case of an industry served by a short line we get per diem every day. In the latter case the short line is using the car every day as a railroad, whereas a shipper is only asking for a vehicle in which to load its commodity and ship it. I could not agree that a short line placing a car at an industry served by it is acting as agent for the Pennsylvania and that the 48 hours' free time allowed that shipper should be taken out of the per diem account of the short line (Tr. 4690). I don't think we should do that because a short line must handle it and they receive demurrage if any is collected. There is no difference between that case and a case where a connecting line gives us a car of freight to handle 20 miles on our road. A shipper may hold it 2 days time, but we pay per diem on the car. I think there is a distinct difference in the two cases, one transaction being with the shipper and the other with the common carrier railroad (Tr. 4691). The fact that the Pennsylvania might receive the same revenue on a shipment from the short line as it received on a shipment from the industry would make no difference. Revenue has no connection with per diem. It might take us only 3 days to handle a foreign car from St. Louis to New York on which we would pay 3 days' per diem, but it might take us 5 days to handle a car from Harrisburg to Winchester. We would

pay $5 on the car we get $10 revenue on and pay $3 on the car we get $400 or $500 revenue on. It has no relation to the problem as I see it. If a short line were a per diem road, I see a difference in traffic handled on a switching charge instead of a line haul charge (Tr. 4692). If that road is a nonsubscriber, it is not entitled to switching reclaim unless it becomes a member of the Association [fol. 985] and subscribes to its rules. If it performs the same service for the same money on a switching charge as a subscriber, it should be allowed a reclaim because it has taken care of its obligations that go with membership. We could not allow a short line the same free time we allow shippers because it would be $2 less in the case of a car originating on the short line. The 2 days' free to the shippers is not a per diem basis to the shipper (Tr. 4693). That is an allowance under the demurrage tariff. In such a case I cannot say that we would be losing $2 on the car. We contemplate earning $1 a day for 365 days a year on Pennsylvania cars if they are off line. If they are on line they cost us that much. It may cost us $2 if the shipper has a car for 2 days, but if he holds it 4 days we get $4 in demurrage. I do not think the first 2 days should be segregated as it is part of the total demurrage tariff transaction (Tr. 4694). I don't think short lines should be on a demurrage basis, unless they are plant facility lines. The Pennsylvania connects with the Valley Railroad which I think is still operating. I think it was under the Birmingham Southern Rules in 1922. I participated in the check which was made about a year ago of the records of the Detroit Terminal. No figures were made of the detention on cars delivered to it by individual trunk lines. I do not know what the detention was on the Pennsylvania cars (Tr. 4695). I know the Pennsylvania gets 5 days and gets 46¢ less per day than it costs to switch. If the Detroit Terminal was allowed a reclaim of 3.89 days on all cars, I don't think it would lose money at all. It used that rate from April up to June and it equalized the per diem paid on cars which it handled for all lines in switching service. I do not know what the outcome would be nor what the detention was with respect to cars handled by the Detroit Terminal for [fol. 986] the Pennsylvania only (Tr. 4696). We know what total money we pay and receive in reclaims (Tr.

4697). I will furnish a statement showing the amount of reclaim, debits and credits. Our no bill coal is handled by our coal agent (Tr, 4698). I know nothing about the holding of coal on mine sidings without demurrage. That matter is covered by car distribution rules. If the car is taken away from the mine siding, it is subject to demurrage. In those cases whole working conditions must be taken into consideration (Tr. 4699). No general rule can be made. In some places it is not possible to move the coal from the mine sidings. I think one of the main factors of the demurrage code in exempting coal cars on mine sidings from demurrage is that the penalty in the car distribution rules has more effect than demurrage in releasing cars. Car service rules cannot be applied while the demurrage tariff reads the way it does. The principal reason for the demurrage rule reading the way it does was to avoid shutting down coal mines and throwing men out of employment. That was the plan when it was first put into effect in Indiana (Tr. 4700). I think it is true that the exception in the demurrage code was put in because there was more incentive to release cars under car distribution rules than under demurrage rules. I do not know that there is anything in the rules furnishing an incentive to a coal operator to get rid of cars during a surplus of coal cars, when he can hold them on his mine sidings indefinitely without paying demurrage. If a mine has a track sufficiently to hold 40 cars, I think that that number of cars could be held on that track free of demurrage, but I do not supervise demurrage rules on the Pennsylvania. I can only say that under the existing demurrage rules it is permitted (Tr. 4701). If a coal car stands at a coal mine for 6 months it will cost us $180. When it moves out all we get is the freight rate (Tr. 4702). We think that a short line ought to [fol. 987] be willing to pay the ownership cost of a car if he has no car of his own, as he is earning his revenue out of the use of the car by the coal operator. I do not think they are parallel cases. If a car was held 30 days we would theoretically lose $30, but if an empty car which is not required stands on a siding we also lose $30 on it. I think the treatment allowed coal mines in the matter of demurrage relates entirely to the demurrage rules, and that it

is permitted for presumably good reasons. It does not apply on other commodities (Tr. 4703). When foreign cars come to our line and stand on mine sidings for 6 months, we have to pay the per diem and will get only $10 or $15 revenue. We would endeavor to take such a car back, but on a number of occasions cars are furnished for coal loading and may remain a week or 10 days and we still pay per diem on them (Tr. 4704). Our nonsubscriber connections with which we settle per diem under Rule 6 (b) are the Bloomsburg & Sullivan, East Broadtop Railroad & Coal Company, Hickory Valley, Kane & Electric Railroad, Marion Railway, Maryland & Delaware Coast, Mount Jewett Kinzua & Riterville, Philadelphia & Western, (Tr. 4705) Pittsburgh & Susquehanna, Sharpsville Railroad, Sheffield & Tionesta, Washington, Baltimore & Annapolis, Washington, Brandywine & Point Lookout, Winfield Railway, Youngstown & Ohio River and Detroit Terminal. The nonsubscribers with which we settle car hire on the basis of the Birmingham Southern Rules are the Benwood & Wheeling, Genesee & Wyoming, McKeesport Connecting, Chicago Short Line, Lake Erie & Fort Wayne, Illinois Northern, Pittsburgh, Allegheny & McKee Rocks, Tionesta Valley and Valley Railroad. In each case the rules were put in under instructions from the Intertsate Commerce Commission (Tr. 4706). I don't think any of the roads which settle under Rule 6 (b) are industrial roads. All our industrial roads are on the Birmingham Southern basis [fol. 988] except some plant facilities which we understand are not common carriers. We have 29 nonsubscribers connections with which settlement is made on a demurrage basis with 2 days' free time (Tr. 4707). It is to be understood they are not common carrier-. I don't know that they have been declared to be common carriers. I know what their situation is and have considered them as plant facilities. If any of them have been held by the Commission to be common carriers they should be placed under Rule 6 (b) (Tr. 4708). They are in the present category because we do not know them to be common carriers. I don't handle demurrage, but I have the records from our Demurrage Department. If some of these roads are common carriers, they should be placed under Per Diem Rule 6 (b) and I think they would. I cannot say whether or not that would necessitate any readjustment of divisions. Demurrage

might be a better arrangement for them, and again it might not (Tr. 4709). What I mean is there might be no difference in their net revenue one way or the other, as a road under the demurrage basis pays more car hire if it hauls cars to the fifth day that it would under Rule 6 (b). This would make no difference if a road was actually declared a common carrier, as it would then be placed under Rule 6 (b) There may be some of them that are common carriers and I would like to get a list of them (Tr. 4710). These roads on a demurrage basis are on that basis because they are owned by industries, and we consider them as plant facilities. Even if they had been declared common carriers that would not change the fact of their industrial ownership, and in that event Rule 6 (b) does not necessarily require that they be put on straight per diem. It provides that it will not apply to industrially owned roads. The Pennsylvania applied the Birmingham Southern rules only to the roads covered by order of the Commission (Tr. 4711). Other roads which thought they were similarly situated requested the same rules, but I told them their case should be considered by the Commission and an order is- [fol. 989] sued, but that we would not do it unless it was ordered by the Commission. We have not placed any industrially owned common carrier roads on that basis without order of the Commission. We thought that was the proper procedure and that the Commission was the best judge as to the status of the road. We did not require an order to put these roads on a demurrage basis because we figured they were plant facilities. So far as I know, none of them participate in through rates. The Raymondsville & Fox Creek gets a switching charge, but that is a peculiar situation (Tr. 4712). We connect with them only to serve two industries. The road is a common carrier on a demurrage basis, but this arrangement has been in effect many years. We assume per diem on the cars which we place on a joint track. The Raymondsville & Fox Creek shoves the cars into the plants and takes them out when they are ready. We pay them a small switching charge but do not and never have interchanged cars with the railroad. The charge is a tariff charge. The road is a common carrier, but that is all the service it performs (Tr. 4713). They publish the charge in their tariff and we observe it. The cars are kept

in our per diem account. We pay the car owner and collect demurrage. The industry is on the demurrage charge. There is only a few cars going to those industries. I think the plant facility roads get an allowance which was fixed by the Association of Railway Executives some years ago. For example, the Allegheny & South Side Railroad, owned by the Oliver Iron & Steel Company, gets an allowance but I don't think it is in a tariff. They get it through some other channel (Tr. 4714). I said this morning that when a carrier assessed a local rate it was equivalent to participating in a through rate and was not a switching charge. That would be the same situation as with roads of this kind on which some allowance was fixed some years ago. If subscriber roads are allowed to settle with nonsubscribers on whatever basis they see fit, it develops into a series of [fol. 990] trading. What one railroad does another feels it has to follow. Divisions are a matter of tariffs, and I am not familiar with them (Tr. 4715). I cannot say what dickering is done in connection with divisions. I think some of our short line connections serve coal mines. Coal mines on our road are exempt from demurrage so long as cars are held on sidings, and that would be true on short lines that are parties to the demurrage code. If the cars were held on mine sidings any length of time it would eat up the earnings. If a short line treats their mines the same as the trunk lines do, the revenue they get would be eaten up by the per diem (Tr. 4716). I do not see that any free time should be allowed to coal lines on coal cars. They should be treated the same as other lines. We have small lines which connect with us and they have the same things to contend with as we have. We must treat all mines the same, but I don't think that revenue enters into it. Small railroads having coal mines are subject to that more or less (Tr. 4717). We understand that the Dent's Run Railroad is a common carrier. It is owned by the Bennett's Branch Coal Company and two years ago was about to be abandoned. It has done very little for some time past (Tr. 4718). We have considered the road as a plant facility belonging to the Bennett's Branch Coal Company, which was the only industry served and which for months could not move a car. We have a number of industrial roads connecting with the Pennsylvania, subscribers to the per diem

rules and which receive a reclaim. The lists I read were lists of nonsubscribers (Tr. 4719).

W. L. BARNES was called as a witness and, being duly sworn, testified as follows:

I am General Superintendent of Transportation of the Burlington Railroad and am directed to give the information requested in the Director's letter of January 20th. I [fol. 991] will first take up cases where car hire is settled under the demurrage plan with nonsubscribers. The Fox & Illinois Union connects with the Burlington at Yorkville, Illinois, and operates 21.7 miles between Yorkville and Morris, Illinois (Tr. 4720). In 1927, we interchanged 570 cars with this railroad and it paid demurrage of $6. It has track connections with the C. O. & P. and the Rock Island. I think it has the same arrangement with the Rock Island as with the Burlington, but I think it is on straight per diem with the C. O. & P. That is a straight demurrage basis with 48 hours' free time and no average agreement, Sundays and holidays excepted. We did not have the aggregate car detention in 1927. Perhaps this road should be checked up as it can afford to pay per diem under Rule 6 (b). When the arrangement was made it was financially embarrassed and behind in its payments (Tr. 4721). We had several conferences and they convinced us that they could not pay the per diem rate. I was advised that a public service line gave them $25,000 to put its poles on their property and that gave them a start. The next road under demurrage is the Tewanee & Galva, operating between Tewanee, Illinois and Galva, Illinois, with which we connect at Tewanee. It operates 9.1 miles. In 1927 we interchanged 30 cars with it and it paid demurrage of $24. It does practically no commercial business and these cars represent company material which we delivered to them. The Galesburg Great Eastern connects with the Burlington at Wataga, Illinois, and operates 10 miles between Wataga and Victoria. In 1927 we interchanged 18 cars with them on which they paid $62 demurrage (Tr. 4722). I do not know how long the cars were delayed on their line. It would appear that this road paid about as much as it would under Rule 6 (b). The Hooppole, Yorktown & Tampico operates 12.7 miles and has only the Burlington connection.

In 1927, we interchanged 156 cars with it and it paid us $141 demurrage. The Illinois Central Electric connects [fol. 992] with the Burlington at St. David, Illinois, and operates 25 miles. In 1927 we interchanged 78 cars with it and they paid us $8 demurrage. It also connects with the M. & St. L., but I don't know what arrangement it has with that road. Our interchange with it is growing less all the time (Tr. 4723). The Illinois Midland connects with the Burlington at Millington, Illinois, and operates 2 miles. In 1927 it handled 320 cars and paid us demurrage of $37. When we have a car for the road, our agent telephones to Newark, the headquarters, and they come down and get it. The Macomb Industry & Littleton connects with the Burlington — Macomb, Illinois, and operates 19.96 miles. In 1927 we interchanged 58 cars with it and demurrage accrued of $180. It owes us $1217 now including the $180 but we have been unable to get money from it as I don't think it has any. The $1217 is all demurrage. The road is on a demurrage basis but we have not been able to collect. The $180 is for the year 1927 and the $1217 covers prior years. The road tried to operate but it did not get far (Tr. 4724). The only thing we could do would be to decline to interchange with it, but if we do that we will get a lot of local criticism and will probably have to appear before the Bureau of Service. We get along the best we can and get as much as we can. The Rockport, Langdon & Northern connects with the Burlington at Langdon, Missouri, and operates 5.6 miles. In 1927 we interchanged 1,030 cars with it and it paid us $188 demurrage. The Shelby County Railroad connects with the Burlington at Shelbina, Missouri, and operates 30 miles. In 1927, we interchanged 216 cars and it paid us $561 in demurrage. On this road we allow 72 hours free time on cars going beyond Shelbyville. The road is in financial straits and could not get the cars back in 48 hours and we give them that additional time (Tr. 4725). It is about 14 miles to Shelbyville and they don't operate beyond that point very frequently. The financial condition of a short line is an emergency, and I think we [fol. 993] have to recognize it. You can imagine what would happen if a trunk line arbitrarily closed them up. They are closing gradually and will go faster with the new hard roads. The Burlington had no part in building them and get along with them the best we can. I think that short

roads should receive some consideration from old established roads, as they were probably built under promotion schemes, either to have a railroad or connect one road up with another (Tr. 4726). They were likely told that the trunk lines would buy them out to control the business, and I feel that we are warranted under the conditions. I don't think we have any instances of short lines in financial straits which are under Rule 6 (b). I would like to see it cleared up, but we don't know what is the best plan to pursue. I am strictly in accord with the per diem rules and with the idea that the owner of a car should get $1 a day as far as it is practical or possible. I have made some exceptions but hope to find a way by which we can get these roads under the rules. In July, 1922, when Rule 6 (b) became effective, I notified these connections (Tr. 4727) that we would change all practices and that they would be charged with per diem under Rule 6 (b). They came to us and convinced us that they could not pay it and survive so that I gave them all the choice of demurrage or Rule 6, and the roads I have named accepted demurrage. I think we have to recognize there is to be a flexibility in the rules, but it is a good idea to have a central organization to decide it and not leave it to each railroad. If we had somebody to submit the case to it could be controlled and given a fair disposition. If we should happen to have information, the board could call for it and we could explain our situation and a short line could explain its situation (Tr. 4728). It could then be disposed of equitably. If we took our car hire allowances away from our short lines, I don't know what we would do in the way of divisions or revenue. All these [fol. 994] roads are agricultural short lines and are not industrial roads. As a successful trunk line we don't feel justified in discontinuing the interchange of equipment even though they don't pay us anything. I have one other arrangement with the Wyoming Railway (Tr. 4729) which connects with the Burlington at Clearmont, Wyoming, and operates 28.6 miles. In 1927 it handled 1,976 cars and paid us $154. The LaCrosse & Southeastern is a nonsubscriber on the per diem basis without free time. It is a fairly busy railroad and connects with the Burlington, Milwaukee and North Western. It seemed to be playing one railroad against another so the three roads got together and put it

on the regular Rule 6 basis, and that is the way it has remained. We also have the Rule 6 basis with the Missouri & Illinois Bridge & Belt Company, but I don't find that we do any business with it. They operate the bridge across the Missouri River and we lease the use of the bridge (Tr. 4730). The Aurora, Elgin & Fox River is a nonsubscriber and we allow it 3½ days free time per car on cars switched by it to the Independent Pneumatic Tool Company at Aurora which we do not reach. The industry can only be reached by this street car line. It pays per diem and we allow 3½ days per car free. We could make up the difference in the switching rate. The Lee County Central Electric is a nonsubscriber and settles on per diem with 3 days' free time. This road has been in serious financial condition throughout its existence of 25 years. The grain elevators on the line took charge of the road and to avoid serious financial loss are endeavoring to operate it. The interchange is small and the per diem earnings are not more than $18 per month. The road has had a lot of trouble. They had 30 or 40 cars of grain in the elevator and the bank closed down on their engine (Tr. 4731). We felt interested because we are its only connection. We got the bank to release the engine and gave them 30 cars and got [fol. 995] the grain out and the people are very grateful to us. The man operating it will lose his savings I think as he cannot make it pay. The Tabor & Northern is a nonsubscriber which pays per diem on any car held in excess of 2 days. The road is about 7 miles long and runs from Malvern to Tabor, Illinois. The road has been through a variety of managements. I mentioned yesterday that we were agreeable to this arrangement and I would like to read the original letter addressed to Mr. Seward of the Short Line Association (Tr. 4732). In that letter dated January 21, 1928, I told him that our records did not disclose how long we had this special arrangement with the T. & N.; that during Federal control it was allowed 2 days' free time on all cars and that this arrangement had been continued; that we did not feel warranted in cancelling it, considering the financial and business condition of the road and the fact that the arrangement had been in effect so many years. We are in the same position with the Minneapolis Eastern and the Railway Transfer of Minneapolis and other roads.

They refused to pay per diem and performed terminal switching service only. We also have an arrangement with the St. Paul Bridge & Terminal Company which is uniform with all roads at St. Paul. It pays per diem to the delivering line on any car held in excess of 8 days (Tr. 4733) except on stock cars held for prospective loading which are free of per diem. The road performs terminal switching only and the holding of stock cars is necessary. Stock is held for feed and water only 5 hours and we cannot get the cars to this road in that time and have them ready to relieve the connecting line cars as they come in. I think the arrangement is absolutely necessary. To the East St. Louis Junction, Kansas City Terminal, Sioux City Terminal, Union Stock Yards at Omaha, Union Terminal Railway, and St. Joseph Belt we allow an arbitrary reclaim in excess of average detention to cover expense of accounting. I understand that is the practice of all roads. Under the service [fol. 996] measure reclaim plan the Terminal Railroad Association of St. Louis is reimbursed for stationery and accounting cost and charges it to hire of equipment (Tr. 4734). We had a number of arrangements with subscriber roads under which per diem was waived on Burlington cars in 1927. We refunded $5,693 per diem which accrued on 1,091 cars to the Mississippi River & Bonne Terre. The per diem accrued on Burlington chats for balancing. In connection with this arrangement $766 was refunded to the Missouri & Illinois and $818 was refunded to the Missouri Pacific, which roads handled the cars in intermediate movement between the Burlington and the Missouri River & Bonne Terre. We refunded this per diem because we had a suitable car for these chats which were handled when we could spare the cars. In 1927 we also refunded $538 which accrued on 58 Burlington cars handled by the Missouri Pacific and loaded with cinders on that line for Burlington Company use. To the Frisco we allowed reclaim of $9,216 on 1,232 cars loaded with chats and $4,708 per diem which accrued on 519 cars loaded with cinders (Tr. 4735). To the Minnesota Western Railroad we allow a special per diem reclaim on Burlington cars of actual time subject to a maximum of 8 days on any one car. That is allowed for traffic reasons to meet competition and I think it is wrong and it will be cancelled. It seemed to be uniform

with all roads. I took it up with our people. I don't think that road is industrially owned. I think it was recently acquired by the Minneapolis, Northfield & Southern. Our arrangement only applies from Lewis Junction west. The arrangement was due to the pressure of the railroads (Tr. 4736). We expected to be criticized here for some of these things. In 1927 we interchanged 1,763 cars with the Rapid City, Black Hills & Western and allowed a reclaim of $6,655. This was a special reclaim allowing a maximum of 4 days on cars loaded one way and a maximum of 6 days on cars loaded in both directions. It was only allowed on Burlington cars to help out a struggling [fol. 997] connection. The road has been in financial trouble. It connects with the North Western and Milwaukee but to get in a revenue it must interchange business with the Burlington. This business is coal and gasoline going to it (Tr. 4737). We get lumber and grain doors from it. The road has been put out of business a couple of times by wash outs and has had a variety of managements which did not seem to pull it out. I have some other cases involving company material. We refunded $551 to the Santa Fe on 90 cars under a special arrangement. The Santa Fe purchases company coal loaded in Burlington cars, provided the Burlington will waive per diem up to 8 days per car. The Coal Company said that it could sell the coal to the Santa Fe if we would waive the per diem. We did it because we thought it was to the best advantage of both companies. The coal originated on the Burlington (Tr. 4738). We also refunded $2,290 per diem to the Belt Railway of Chicago on 104 cars. This was a special arrangement to permit the Belt to accumulate a supply of company coal prior to the miners' strike. The Burlington is part owner of the Belt. We also refunded $1,067 to the Santa Fe on 120 cars ballasted for the Burlington on the Santa Fe at Chillicothe, Illinois. We refunded $256 to the Great Western on 25 cars loaded with cinders for company use on the Great Western at St. Paul. We refunded $50 to the Northern Pacific on 6 cars furnished for loading cinders on the Northern Pacific for Burlington Company use. We had to get the cinders for construction work. We refunded $1,232 to the L. & N. on 453 cars delivered to the L. & N. to be loaded with Burlington Company coal in Ken-

tucky during the miners' strike in Illinois. The reclaim was for the days the cars were held empty at mines from date of arrival to date set for loading. We refunded $8,947 to the Erie Railroad on 1,153 Burlington cars loaded with Erie ties. The per diem was refunded while the cars were on [fol. 998] the Erie up to 12 or 15 days per car (Tr. 4739). The Erie demanded that its cars be used and that if we did not use them they would give the business to our competitor. We had the cars available and we thought it was good business to save per diem on the Erie cars going down and coming back. I was ahead on the per diem as it was a good proposition. We had the same arrangement with the Pere Marquette to which we refunded $790 on 89 cars loaded with Pere Marquette company ties. Per diem was refunded while the cars were on the Pere Marquette up to 10 days per car. We have no instance of placing our cars on other roads and relieving them of per diem (Tr. 4740). I have given the names of the two nonsubscribers with which we settle on straight per diem. I don't think there is anything in it to put the cars up to the front door of the shipper for competitive reasons where they are in a more favorable condition than some road that can't do it. I have not favored the idea and have thought that competition would be worked out in superior service. I think the holding of automobile cars is an economical arrangement. We are holding such cars under reclaim of per diem for the Northern Pacific, and have not hauled an empty Northern Pacific car from St. Paul in 2 years. The cars are loaded to eastern territory covering home route junctions, or are loaded on the Burlington around Chicago. We accumulate them there and hold them. The Northern Pacific solicits business on the basis of its cars and places the orders direct with us for the cars. We make delivery and equalize every empty car by a loaded car back routed our way. I have also accommodated other roads which had orders placed for Northern Pacific cars but which did not have them available (Tr. 4741). To avoid holding the cars, I delivered them for these roads to the eastern connections and they paid me for the service. I think it is an economical and practical arrangement. I don't favor the holding of cars at the front door of the shipper, but I think it is all right [fol. 999] to hold them at the western terminus of the

originating road. The cars may be wanted at various automobile loading points and they could hardly be distributed so that they would be at the right place at the right time. I am pretty firmly of the opinion that the rules are all right as they have been worked on for 25 years. I think more time has been spent on them than perhaps any feature of railroad operation (Tr. 4742). It costs a lot in time and money to formulate them and I think they must be all right because they are agreed to by practically all roads. I think they are lived up to fairly well. This seems like a long list but the Burlington connects with about 125 different railroads and these are just a few where there is a little exception. These things have to be taken care of, but they should be taken care of by a central body. I would not want the rules sufficiently elastic to permit of local arrangements, because I think the per diem rules are as good as they can be made. We have expert men of experience selected for their efficiency by territorial location, who report to the Transportation Department of the A. R. A. which is composed of officials who have great responsibilities. The rules are intelligently supervised and my idea is to let them alone (Tr. 4743) except with respect to slight revisions such as have recently been made and will be made in the future.

G. F. MALONE was called as a witness and, being duly sworn, testified as follows:

I am Superintendent of the Car Service Department of the Baltimore & Ohio, and I have the data requested in the Director's letter of January 20th (Tr. 4744). We only have two departures from the per diem rules, if they are departures. The first one is on the Monongahela Railroad, [fol. 1000] which Mr. Kennan explained. From February 15th, when we became part owner of the Monongahela until the end of 1927, we paid it $35,983 on 10,380 cars. The other departure is with the Pennsylvania. We allow it special reclaim for full detention on cars in Baltimore & Ohio joint operation on the Coal Lick Run Branch of the Pennsylvania. We have rights on that branch, but instead of sending our power on it, we pay the Pennsylvania to place our cars. The cars should not be interchanged but so many are di-

verted that we found the best plan was to interchange them and pay the per diem. It is our business entirely but I wanted to report it. In 1927, we paid $2,978. Those are the only departures that I know of, if they are departures, that we have with member lines (Tr. 4745). The Lima & Defiance, Mt. Jewett, Kinzua & Riterville, West Virginia Midland, Washington, Baltimore & Annapolis, and the Cleveland, Southwestern Railway Light & Power Company are nonsubscribers, from which we collect per diem without reclaim, except that on the Cleveland Southwestern we charge demurrage on their company coal unloaded at the power house at Aurora, Ohio. That coal moves only a few hundred feet to their power house. We assess demurrage against the Strouds Creek & Muddlety and Winchester & Western. I wrote those roads prior to this hearing, and when we got notice of the hearing asked them to hold the letter in abeyance (Tr. 4746) because it is not in accordance with the per diem rules. The way we are settling now is not in accord with the per diem rules and I wanted to change it, but I did not want to change it now and change it again possibly after the hearing. On short line nonsubscribers serving coal mines we do not charge per diem or demurrage on coal cars delivered to them for loading but handle it under our car distribution rules. When that was put into effect most of them were not receiving any proportion of the through revenue. We were getting our full revenue on each car from the junction point [fol. 1001] as though it had been loaded at one of our mines. Since then those roads have received proportions of through rates, none of them, I think, less than 18¢ and some of them I think more. Recently an Examiner has recommended that they receive not less than 32¢ a ton (Tr. 4747). Since they have decreased our revenue as compared with cars loaded on our own tracks, I think they should pay for the use of those coal cars, even though they are exempt from demurrage, while held on mine sidings. They are common carriers and should either pay the car owner for the use of the car or buy their own cars. The Buffalo Creek & Gauley, 18 miles long, uses our cars and pays under per diem and we pay per diem on their cars while we are using them. Our cars cost us $1 a day while placed at our own coal mines, and if they are held there indefinitely we receive no per diem. That is also true of a short line connection if it is a

party to the Remurrage Code. It receives no compensation from the car owner, but pays the trunk line $1 per car per day (Tr. 4748). Some of the short lines, to compensate themselves, assess demurrage against the coal mine, and I imagine that would be a departure and would put the mine on that road on a different basis than mines on other roads. We would rate the mine, but I do not understand why the carrier did not figure out that it should pay for the use of the vehicle in which it is going to transport their freight or else buy cars as the Baltimore & Ohio did. We give a coal mine on our line a long delay on some cars, but we don't let him hold them indefinitely (Tr. 4749). We tell him he must either dispose of the coal or we will unload it and load it up at his command and charge him for doing it. We hold some cars 3 months and maybe some slip through longer. We have cases where some have sat on coal sidings 3 months. We have not refused to give the short line railroad one day up to now, but it has come to [fol. 1002] a point where they are getting a part of our revenue, and I don't think we should keep on holding them up. We get our full revenue out of traffic from mines on our line but from those on a short line we have a reduction as the short line collects part itself (Tr. 4750). A mine holding our car for 3 months would cost us $90. That might be more than the revenue we would get on the car, but the car would be empty in any event. The difference between that and turning it over to the short line is that the short line is a common carrier and should either provide itself with equipment or pay for it. The short lines in these instances receive a division of the rates, except on the Preston Railroad. On cars handled under a switching charge, it is allowed actual free time up to and including 3 days. That road serves a lumber mill 3 miles from our connection. The Commission forced them to make a switching charge for the movement (Tr. 4751) and we allowed them free time up to 3 days and then we charged them $1 a day. That is a departure from the per diem rules and it should not be. The Benwood & Wheeling, Chicago Short Line, McKeesport Connecting, Pittsburgh, Allegheny & McKees Rock, Pullman and Tionesta Valley are industrially owned roads which settle under the Birmingham Southern Rules and are covered by the Commission's order. I think those rules

allow those roads to use cars in interterminal or inter-plant service without paying for them (Tr. 4752). Outside of that I don't see much difference between those rules and the per diem rules. They would receive a reclaim up to an average of 5 days, but under the per diem they would not be paid for cars in interterminal movement or used locally. I think the Birmingham Southern plan gives more free time than they would be allowed under the reclaim plan, and to that extent I think they are unsound. We connect with 12 steam railroads which are classified as plant facilities and demurrage is charged direct against shippers and con- [fol. 1003] signees (Tr. 4753). They are industrially owned roads but are common carriers. The per diem rules do not apply to them but except industrially owned railroads. No rule of the Association authorizes the demurrage basis; we just put them there. If that little item was taken out of Rule 6 (b) it would be all right. I think they ought to be under per diem (Tr. 4754). I see no reason for treating a road differently because it is industrially owned. All roads should be under the per diem rules if they are common carriers. We also connect with 6 electric lines which are in the same position as the last list of roads that I gave. I will furnish a statement of our switching reclaim debits and credits for 1927 (Tr. 4755). At the present time short lines might be adding unnecessary cars to the supply if they bought cars and put them into service. The Buffalo Creek & Gauley is such a road and we have had no trouble with it. It has cars and is a member of the per diem rules agreement. We pay it per diem and it pays us per diem. In times of surplusage, the cars that are used keep our cars out of service to that extent (Tr. 4756).

FRANK M. GATES was called as a witness and, being duly sworn, testified as follows:

I am Superintendent of Car Service of the Soo Line and am here in response to a letter of the Director dated January 20, 1928 (Tr. 4757). I will first cover per diem paid by the Soo Line in 1927 on Soo Line cars held for company material. We made allowance to 5 roads for per diem on cars used for company ties. We allowed $48 to the A. C. H. & B., $621 to the D. W. & P., $270 to the Great Northern,

$1,552 to the M. D. & W., and $2,621 to the Northern Pacific and M. & I. We also allowed per diem to 5 roads on our cars used for company coal loading. To the C. & A. we allowed $44, 12 cars; to the Burlington $551, 95 cars; to the [fol. 1004] Illinois Central $174, 32 cars; to the Missouri Pacific $252, 21 cars; and to the Wabash $712, 131 cars. We also allowed reclaim of $3,554 to the D. & N. E., in 1927, on 556 cars held for Soo loading at Cloquet, Minnesota; and $3,039 to the Midland Continental on 1,158 cars held for Soo loading. By "Soo loading" I mean revenue business (Tr. 4758). We allowed $1,424 to the Minnesota Western on 269 cars held for loading over the Soo Line. That arrangement was cancelled on April 1 of this year. We also allowed $1,135.62 to the Spokane International on 508 cars held for Soo loading. That was cancelled effective March 1. We cancelled the Spokane-International arrangement because we had gone quite a distance from home. The shipments moved first over the Spokane International, the Canadian Pacific and then over the Soo Line, a haul of about 1,000 miles. The Minnesota Western arrangement was to meet competition and save intermediate switching via the Great Northern (Tr. 4759). When the Minnesota, Northfield & Southern took over the Minnesota & Western, the intermediate movement by the Great Northern was eliminated and we make direct delivery to the M. N. & S. that that the cars could be turned over to the Minnesota & Western on the same day. The Minnesota & Western was agreeable to the cancellation. We made the allowance to the Duluth Northeastern to meet competition of the Great Northern and Northern Pacific who were able to supply cars when orders were placed. Our supply is at Superior, Wisconsin. We have to deliver to the D. W. & N. at Duluth who handles the cars 23 miles and delivers to the Duluth Northeastern (Tr. 4760). We allow reclaim from the date the car arrives until it is placed for loading. The car is held to apply on loading of lumber principally. The roads I have mentioned are all subscribers. The Midland Continental arrangement was made to meet the competition of the Northern Pacific at Milwaukee. The Northern Pacific delivers a in switching service and the Milwaukee has about [fol. 1005] a 10 mile haul, whereas we have to haul 23 miles. I explained the Spokane International arrangement. There were only 4 arrangements and two have been cancelled. We

have felt that we could make special arrangements with subscribers, but if we are wrong we would be glad to correct our method (Tr. 4761). We think it is a good business practice because it avoids considerable extra haul and tends to serve the public. It now appears that the principle is wrong to begin with and that the special arrangements should not have been made. I doubt if they should apply to nonsubscribers, as I don't think we should give anything in the way of per diem. I don't believe under our present rules we should hold cars on the lines of subscribers free of per diem. I think all roads should settle at the per diem rate, and that a nonsubscriber should get switching reclaim provided the arrangement is made and the rule permits it. I think a nonsubscriber should have a switching reclaim even though not a member if a rule is made to that effect (Tr. 4762). I think it would be a good rule to settle at regular per diem with switching reclaim, even though they are not members of the Association. We have 14 nonsubscribers, and I will cover the first 7 covered by the per diem settlements. We collect full per diem without free time or reclaim from the Marienett, Tomahawk & Western, Minneapolis, Anoka & Cuyuna Range, Milwaukee Electric and Minnesota Northwestern. We are getting no per diem from the Minneapolis Eastern or the Railway Transfer of Minneapolis, as they have declined to pay it. All cars handled by them are switch cars, and they are owned by other railroads. They are not subscribers to the agreement (Tr. 4763). We have presented statements of per diem due from them each month, but they have declined to pay, and we have done everything but sue them. If they subscribe to the agreement, there is no question but that Rule 5 would cover it. The average on the Soo Line would not run over 4 days per car and they are all Rule 5 cars. [fol. 1006]—I listed the St. Paul Bridge & Terminal Company as a connection, but we have no direct connection with it. Our cars are handled by the Northern Pacific as an intermediate line and it is treated as an industry on the Northern Pacific. We make our settlements with the Northern Pacific, although an arrangement was entered into between the Terminal Company and the North Western Association of Car Accounting Officers under which the Terminal Company pays per diem on all cars other than stock

cars held over 8 days, but pays no per diem on stock cars (Tr. 4764).

J. O. KLAPP was called as a witness and, being duly sworn, testified as follows:

I am Supervisor of Demurrage of the Soo Line Railroad and will explain the demurrage arrangements which our road has with some lines. The Fairchild & Northeastern is a subscriber. To it we allow 6 days' free time on a car loaded in both directions and 4 days' free time on a car loaded in one direction, after which we assess $2 demurrage for the first 4 days and $5 a day thereafter. We have the same arrangement with the Laona & Northern. The charges are the regular straight demurrage rates (Tr. 4765). The Illinois Northern arrangement was put in under order of the Commission. The Glidden Southwestern, Nahma & Northern and Michigan & Northern Power Company are all treated as plant facilities and we collect demurrage from shippers and consignees located on those roads. The first two roads I have mentioned are industrially owned. When uniform demurrage rules were first approved the Committee of Railroad Commissioners said there was no place in the demurrage code for car hire as between carriers, and by "carriers" they meant bona fide carriers. As Manager of the Wisconsin Demurrage Bureau, I had difficulty with some 67 roads in telling which were common carriers and which were not common carriers. The test we applied was whether or not the roads held a state charter and were, therefore, [fol. 1007] participating in through rates (Tr. 4766). The Fairchild & Northeastern and the Laona Northern were holding state charters from Wisconsin and were getting divisions of through rates. We entered into negotiations with them and this was the outcome. That was in 1911 before the time our demurrage tariffs, carrying the rule that a company doing its own switching with a mileage from 1 to 5 miles, would be allowed 20 hours additional, 5 to 10 miles 30 hours additional and over 10 miles 40 hours additional. These roads were over 10 miles in length, so we allowed 2 days for switching, being the 2 days allowed under the demurrage tariff.

W. MOSBY was called as a witness and, being duly sworn, testified as follows:

I am Superintendent of Transportation of the St. Louis Southwestern Railroad (Tr. 4767). I have prepared some evidence in response to the Director's letter of January 20, 1928. We waived per diem on ballast cars going to the Frisco Railroad. In January we waived $12 per diem on 2 cars, in May $91 on 19 cars, and in June $39 on 6 cars. We waived no per diem on automobile cars, grain cars or any others. We have 7 so-called short line connections. The Gideon & North Island Railroad is 21 miles long and is on straight per diem with no free time. It is a nonsubscriber (Tr. 4768). We have one short line connection to which we do not charge per diem, that is the Shreveport, Houston & Gulf. It is on the demurrage basis with 48 hours' free time. We charge it demurrage because there is no rule to prevent it, and they asked for permission to settle on that basis. It is the only one. Rule 6 does not prohibit this as it is an industrial common carrier. The rule says we must charge per diem except to industrial common carrier-. I do not think an industrial common carrier ought to be treated any differently than a road not industrially owned but we made the [fol. 1008] exception because the rule excluded industrial common carriers. The Blytheville, Leathville & Arkansas Southern is 56 miles long and settles car hire on straight per diem with no free time, except that on cars it handles on a switching charge we allow it a reclaim, although it is not a subscriber (Tr. 4770). The rule does not prohibit this as it is an industrial carrier. All of our short connections are industrial common carriers. The Thornton-Alexandria is 27 miles long and pays straight per diem with no free time, except that we allow reclaim on cars handled on a switching charge. The Fordyce & Princeton is 17 miles long and pays straight per diem with no free time, except that it gets reclaim on switched cars. The Jefferson & Northwestern, 44 miles long, pays straight per diem with no free time, as it does no switching. The Angelina & Neches River is 30 miles long and pays straight per diem with no free time, as it does no switching. The Shreveport, Houston & Gulf, 11 miles long, is on the demurrage basis. These are our only nonsubscriber con-

nections (Tr. 4771). The Jefferson & Northwestern runs from Naples, Texas, to Jefferson, and has just recently arranged to use our facilities at Naples where we connect with it. The T. & P. connects with it at Jefferson. The Commission may have condemned the reclaim plan with industrial common carriers, but in the absence of a direct order we would not understand that we could not put the Birmingham Southern rules in. We allow reclaim to industrial common carriers where they perform switching service and charge them per diem or demurrage. Nothing prohibits it. Our arrangement with the S. H. & G. was put in after it went back to private control in 1920. I think the other arrangements went in about 1924. We charge some of them demurrage, but our people thought we ought to charge per diem (Tr. 4772) and we told them we were going to do that. It was satisfactory. We granted this arrangement to the Shreveport, Houston & [fol. 1009] Gulf, but we prefer a per diem basis. We did it because there was no rule to prevent it. We think it is reasonable, although we would rather have the per diem. I see no reason for treating a common carrier nonsubscriber which performs switching service any differently than a subscriber. I will furnish a memorandum showing our reclaim debits and credits in 1927 (Tr. 4773). Our road connects with the Texas & Southeastern which is a subscriber. I have never heard that it wanted to be placed on the Birmingham Southern basis and we are not willing to do that. I distinguish between it and the Shreveport, Houston & Gulf because it signed the per diem rules agreement and the Shreveport, Houston & Gulf did not. If the Texas & Southeastern withdrew from the per diem agreement, I don't think we would give it the same treatment as the Shreveport, Houston & Gulf. We have two railroads, one the St. Louis Southwestern and the other the St. Louis Southwestern of Texas. What is done in the north does not apply in Texas (Tr. 4774). If we had demurrage roads in that territory we would treat them all alike. We connect with the Warren & Sabine River and the Fordyce & Princeton and the Thornton & Alexandria. The last road can get a refund on cars switched on the switching charge, but they get no free time from

us. They may get it from the Rock Island but I don't know.

J. E. MURPHY was called as a witness and, being duly sworn, testified as follows (Tr. 4775):

I am Superintendent of Car Service of the New Haven Railroad, and have prepared data in response to the request of the Director. Our road has no automobile cars. Our nonsubscriber connections which settle under Per Diem Rule 6 without reclaim or free time are the Narragansett Pier, South Manchester, Wood River Branch, New York, Westchester & Boston and United Electric (Tr. 4776). The only nonsubscriber that we settle with on a basis other than Rule 6 is the Moshassuck Valley where settlement is made [fol. 1010] in accordance with the finding of this Commission at 49 I. C. C. 368. I understand that road performs no switching service but only line haul service. I think it is about 2 miles long. The Fall River Railroad is a nonsubscriber and has been withholding settlement for the use of cars by it since the end of Federal control. We assess the charges under a contract made by the predecessor of the Fall River in which it was agreed that settlement should be on a demurrage basis. Suit to collect the accrued charges is now pending in court (Tr. 4777). I have just mentioned the nonsubscribers. If it was not on the Birmingham Southern basis and was a subscriber it would not be entitled to reclaim unless it performed a switching service at a switching charge, and I understand it does not, As a subscriber it would pay straight per diem without free time. I will furnish a memorandum showing our switching reclaim debits and credits in 1927 (Tr. 4778). All the roads I listed are on the per diem basis except the Moshussack Valley which is on the Birmingham Southern basis and the Fall River is on the demurrage basis under a contract. The contract was made with the predecessor of the Fall River, which I think is an industrially owned common carrier. It is on a straight demurrage basis. The Union Freight Railroad is considered as part of the New Haven. It was so found by the Commission at 69 I. C. C. 282-292 (Tr. 4779). With that road we allow 2 days free time on cars taking local delivery and 1 day free time on overhead business

with the Boston & Maine. It is not a subscriber. The New Haven has no departures with subscribers, subscriber short line connections or with subscriber trunk line connections. None of our cars are held on foreign lines for prospective loading free of per diem.

R. F. Watts was called as a witness and, being duly [fol. 1011] sworn, testified as follows (Tr. 4780):

I am Car Accountant of the L. & N. and have prepared data in answer to the Director's request. There were no points at which our system cars were held on foreign lines free of per diem or subject to reclaim for prospective loading in 1927. The Alabama & Western Florida and Rock Castle River are short line connections of the L. & N., are not industrially owned and not subscribers but settle for car hire at the per diem rate without reclaim or free time (Tr. 4781). They are nonsubscribers settling under Rule 6 without exception. The Artemus-Jellico, Cadiz, Carrollton & Worthville, Flemingsburg & Northern and Kentucky, Rock Castle & Cumberland are nonsubscriber connections who do not settle under Rule 6. Rule 6 is applied on foreign equipment but L. & N. cars are handled under the National Demurarge Rules Average Agreement. That applies on all these roads. The practice of putting L. & N. cars on the average agreement originated with one road some years ago which claimed that it was not making any money and could not make any if we applied the per diem rules. We thought that at that time, under the wording of the rule (Tr. 4782) we could make any arrangement we wanted to with our own cars. After the arrangement was put in with one road the others requested the same agreement. These roads are little agricultural short lines and are not industrially owned. The Kentucky, Rock Castle & Cumberland handles some coal. We did not put the Alabama & Western Florida and Rock Castle on the same basis as they did not ask it and did not seem to need it. If they did ask it we would not give it to them right now. I would recommend not extending the matter further until we know the result of this investigation. We connect with the Birmingham Southern which is under the Birmingham South-

ern Rules and also with the Ohio & Kentucky which is industrially owned (Tr. 4783) and which pays under Rule 6 [fol. 1012] on foreign equipment and under the average agreement on L. & N. cars. The last two roads are industrially owned. I did not put the Ohio & Kentucky on the same basis as the Birmingham Southern as I could not determine definitely whether or not it was industrially owned. I don't think the Birmingham Southern rules tend toward car efficiency. I think the straight per diem rules would give it the same result, if not better. I don't know that car efficiency has been speeded up under the Birmingham Southern Rules. We also connect with the Manistee & Repton (Tr. 4784) at Monroeton, Alabama. It is a line 20 miles long and under a contract with us, its only connection, it is required to maintain agencies under the rule governing our stations. Under this arrangement the agents enforce our demurrage tariffs and report direct to their Auditing and Claim Departments. I mean that demurrage is assessed against the shippers under L. & N. tariffs. The Manistee & Repton is a party to the tariff and is carried in our station list as part of our system. The connection is that close under the contract. We have no other roads (Tr. 4785). I think the Jefferson, Southwestern is a per diem road as is also the Norton & Northern if it is still in existence. I don't think the Mammoth Cave Railroad is standard gauge. We never interchange any cars with it. All of our short line connections which are subscribers are on the straight per diem basis without exception. I will furnish a memorandum showing our switching reclaim credits and debits for 1927 (Tr. 4786).

A. T. LOWMASTER was called as a witness and, being duly sworn, testified as follows:

I am General Superintendent of Transportation of the Chesapeake & Ohio Railroad and have prepared data in response to the Director's request. In 1927 no Chesapeake [fol. 1013] & Ohio cars were held on foreign lines free of per diem or subject to reclaim for prospective loading. The Big Sandy and Kentucky River, Moorehead & North Fork, Kanawha Central, Winifred Railroad and Brookville

are nonsubscriber connections which pay per diem under Rule 6 without reclaim. With the Greenbrier, Cheat & Elk, the Nelson & Albemarle, the White Sulphur & Huntersville (Tr. 4787), the West Virginia Southern and Louisville, Ronceverte & Arkansas we settle car detention under the National Demurrage tariff. We consider those lines as practical plant facilities, since practically all their business is for account of the owners. I don't think we have any short line connections that are not industrially owned. I think the Big Sandy & Kentucky, Moorehead & North Fork and Kanawha Central and Winifred are industrially owned but they are on a per diem basis. The others are on a demurrage basis. The Nelson & Albemarle is considered a common carrier, but the others are not (Tr. 4788). We did not put it under Rule 6 because we compromised when we set out to put all these short lines on per diem. While we were negotiating with the Nelson & Albemarle the Birmingham Southern decision came out and the Nelson & Albemarle convinced us that they had the same situation because 98% of their traffic was handled by the Alberene Company. I have differentiated among these lines based on the character of the traffic. Where most of the traffic was for account of the owner, I felt that made the road more or less a plant facility and an industrial carrier under the rule, so that they were exempt from per diem and would settle under tariff demurrage. I don't see how that would result in any particular preference (Tr. 4789). The other lines are industrially owned but they are common carriers and file tariffs with the Commission and get a proportion of the rate. I thought it proper to charge them per diem under Rule 6. An industrial carrier will handle traffic for any- [fol. 1014] one, but in our case they don't handle much traffic for anybody other than themselves. All the traffic of the Greenbrier, Cheat & Elk is that of the West Virginia Pulp & Paper Company. I have named all of our short line subscriber connections. The Eastern Kentucky and Kanawha, Glen Jean & Eastern would probably be classed as short line subscribers (Tr. 4790). They are subscribers and pay per diem the same as any other subscriber. We have no subscriber connections which do not pay per diem. The 5 roads on a demurrage basis we allow the free time allowed under the National Demurrage Code, which I think

is 2 days. I will furnish a statement of our reclaim debits and credits in 1927.

R. L. SPROUL was called as a witness and, being duly sworn, testified as follows:

I am Assistant Superintendent of Car Service of the Southern Railway. I am prepared to furnish the information called for in the Director's letter of January 20. We have no instances where the Southern assesses per diem on its cars when on foreign lines. We have 20 nonsubscriber short line connections which are on the per diem basis (Tr. 4792). We have two industrially owned or controlled roads which are nonsubscribers and on which we assess straight demurrage. They are the Appalachian and Nelson & Albemarle. They pay straight demurrage under the National Demurrage Rules. We have 3 nonsubscriber connections not industrially owned with which we settle on the straight demurrage basis. They are the Due West Railway, the Ferdinand Railroad (Tr. 4793) and the Louisville, New Albany & Corydon. We do not settle with them under Rule 6 because they are small community roads which have been on the demurrage basis for many years. They are really not important enough to require any change and we have made none up to this time. The Birmingham Southern and Ware Shoals are industrially owned nonsubscribers with which we settle under the Birmingham Southern rules [fol. 1015] which is a modified demurrage basis. It allows 3 days. That is all of our nonsubscriber short lines (Tr. 4794). We have a number of subscriber short line connections which settle on straight per diem. The first list I gave were nonsubscribers. We have no subscribers except those that pay straight per diem. We pay the Appalachian and Nelson & Albemarle on a demurrage basis because we felt that we would apply the principles laid down in the Birmingham Southern case to these roads. I do not know when they were put on that basis. I see no reason for different treatment to a road industrially owned than to one not industrially owned. I think both should pay per diem (Tr. 4795). Under Rule 6 (b) we can make a different arrangement with an industrially owned road than with one not so owned. I understand the exception was made be-

cause of the Commission's decision in the Birmingham Southern Case. I don't know how we treat short line connections which are depedent upon us for coal cars. I have nothing to do with coal car distribution or demurrage on them. We have a number of short line connections which do depend on us for coal cars and all — them are not on the per diem basis. The Kentucky & Tennessee is strictly a coal road and it is on the Rule 6 basis. The Morgan & Fentress and Tennessee Railroads are others. All of our coal roads are on a per diem basis under Rule 6, unless you call the Birmingham Southern a coal road (Tr. 4796). I assume that these short line coal roads are subject to the Demurrage Code the same as the Southern and that coal cars while on sidings are exempt from demurrage on those roads. If cars are held on the mine siding the short lines cannot assess demurrage but are required to pay per diem to the Southern. They don't take the cars until the business is ready. A mine might hold a car as a no bill because of no market, but I know of no instances of that kind. [fol. 1016] These roads are on straight per diem without reclaim (Tr. 4797).

Cross-examination:

I know the arrangement with the Appalachian Railroad was made after it withdrew from the per diem agreement. The arrangement is reasonable to them but not to us as we would rather have $1 a day for our cars than a demurrage basis. I have seen the correspondence between the officials of the Southern and the Appalachian but I know nothing about it. I don't know when the arrangement was made with the Due West Railway (Tr. 4798). I will furnish a statement of our switching reclaim debits and credits for 1927.

Mr. McCarthy: At page 1460 of the record, the cars interchanged by the Northampton & Bath in 1925 was said to be 62,191. A request was made at pages 1481 and 1482 for a segregation of these cars as between cars moving under through rates and cars moving under switching charges. On 52,091 of those cars the Northampton & Bath received a division of the through rate. On 10,100 of those cars the Northampton & Bath charges were absorbed by the connecting lines. I should also like to say that in Au-

gust, 1927, the Northampton & Bath interchanged 244,414 tons of freight of which 244,170 tons moved on through rates (Tr. 4799), out of which the Northampton & Bath received a division, and on only 244 tons were the charges of the Northampton & Bath absorbed by connecting lines. I would also like to offer in evidence page 301 which explains the income account of the Northampton & Bath annual report to the Interstate Commerce Commission for the 6 years 1922 to 1927, inclusive. I offered to show that in 1925 the $110,000 which the Northampton & Bath would have paid under per diem was about 2½ times its income for that year (Tr. 4800).

Director Bartel: Let it be understood that Mr. McCarthy will file a copy at page 301 of the annual report of the Northampton & Bath for the years 1922 to 1927, inclusive, [fol. 1017] within 10 days.

SHIRLEY SEWARD, having been previously called as a witness, was recalled and testified:

I am now representing the Dansville & Mount Morris. That road has prepared an answer to the questionnaire.

(Said document received in evidence as Exhibit No. 522.) (Tr. 4801.)

I also have a map of the Dansville & Mount Morris showing its local connections and the towns served by it.

(Said document received in evidence as Exhibit No. 523.)

The road connects with the Erie Railroad at Mount Morris, New York, and runs 15 miles southeast to a stub-end at Dansville. It has some intermediate stations but 99% of the traffic is to and from Dansville. The Lackawanna does not serve Dansville as it runs along the side of the mountain. The Dansville & Mount Morris does not connect with the Lackawanna (Tr. 4802). The only connection of the Dansville & Mount Morris is with the Erie. Its traffic is entirely interline. It has no local traffic and performs no switching service. About 60% of its tonnage is inbound. The cars shown in the answer to question 10 of Exhibit 522 as being switched were forwarded to Mount Morris and delivered to the Erie under a switching charge of $7. It is the only car handled in this way. All of the

industries on the line are located at Dansville, some adjacent to the rails and some short distances away (Tr. 4803). If this road was abandoned the manufacturers would be driven from the town and they would have no other railroad facilities. It would be a calamity to Dansville. The road has 2 steam locomotives, 2 passenger coaches and 1 gasoline combination motor car, but owns no freight cars and has no local service. Its entire traffic is interline- with the Erie. I have prepared an operating financial statement for the 10 years 1917 to 1926, inclusive (Tr. 4804).

(Said document received in evidence as Exhibit No. 524.)

The car hire accruals on this exhibit include a small [fol. 1018] amount paid on mileage cars. I have for the same 10 year period a statement showing for each year the freight revenue, car hire and their percentage relationship.

(Said document received in evidence as Exhibit No. 525.)

The exhibit shows that over the 10 year period per diem absorbed 16% of the freight revenues. I have also prepared a statement of revenue carloads handled by the road in 1926.

(Said document received in evidence as Exhibit No. 526.) (Tr. 4805.)

The exhibit shows that in 1926 the road handled 4,485 carloads of which 2,834 were inbound and 1,651 were outbound. The tonnage consisted of a variety of commodities. In 1923 the average detention per car was 4.412 days, in 1924 was 4.253 days, in 1925 was 4.052 days, and in 1926 was 4.149 days. Exhibit 522 asks for per diem with 3 days Free time, but we think that if a cent and a half a mile is reasonable on tank cars and two cents a mile is reasonable on refrigerator cars, those rates should be reasonable on per diem cars. Either basis would be satisfactory to this road. I have prepared for 1926 a comparative car hire statement (Tr. 4806).

(Said document received in evidence as Exhibit No. 527.)

The exhibit shows that in 1926 the road interchanged 3149 cars with the Erie Railroad, that its freight revenue

was $83,539.47, that its revenue per car was $26.52, that its per diem accruals were $12,415.70, that it would have paid $6,966 with 2 days free, $4,674 with 3 days free, $1,417.05 at 1½¢ a mile and $1,889.40 at 2¢ a mile. I refer to car units interchanged. The road collects demurrage from its patrons under the straight and average agreement, and collected $2,489 in demurrage in 1926. The company was incorporated in 1891 in New York (Tr. 4807) to acquire the property of the Erie & Genesee Valley Railroad which had been incorporated in 1868 and whose property was sold at foreclosure in 1891. The road was reorganized as the Dansville & Mount Morris in October, 1891. From June, [fol. 1019] 1894 to May, 1925, the road was operated by receivers. The property was returned to the company and the receivership terminated in September, 1927.

Cross-examination:

I don't know what caused the changed conditions in 1926 as compared with other years, shown *shown* on Exhibit 524. I don't know what caused the reduction in operating ratio to about 60% from 110% in 1921 (Tr. 4808). There was a change in management about that time. The disparity between car hire paid in 1925, as shown on Exhibits 522 and 524 is due to the fact that on Exhibit 524 the hire of mileage cars is included. This figure is not included in Exhibit 522. The road has always paid mileage on cars of private ownership (Tr. 4809) and that is the cause of the difference. I conclude that if the mileage rates paid on tank cars and refrigerator cars was reasonable they would be reasonable on per diem cars because of the similar movement and similar dates. I know nothing about whether per diem rates are supposed to return to the owner the cost of maintaining a car and owning it (Tr. 4810).

Mr. Hitt: At pages 3924 to 3926 of the record the witness for the East Carolina Railroad was asked to furnish a copy of the contract for switching service with the Atlantic Coast Line, a statement of inbound and outbound loads handled in per diem cars in 1926, and a statement of inbound per diem cars handled in 1926 and the mileage made by them. I offer that information as an exhibit.

(Said document reveived in evidence as Exhibit No. 528.)

IRELAND HAMPTON, having been previously called as a witness, was recalled and testified (Tr. 4811):

Mr. Hitt: We previously offered as part of Exhibit 499 a summary by Mr. Hampton. That part of the exhibit was ruled out on the ground that it was argumentative. We ask the privilege of re-introducing it in view of the testimony of Mr. Crawford.

[fol. 1020] Director Bartel: It was ruled out on several grounds on matters not covered by the investigation.

Mr. Hitt: All right; we will now withdraw that offer and I now offer a revised exhibit with the matter eliminated therefrom which I understand was objected to. The purpose of the exhibit is to show, among other things, that some 50% of the net revenue of Class I carriers (Tr. 4812) is derived from traffic originated by Class II and III roads, and anything that tends to take from these roads this business will injure the revenue of Class I roads.

Director Bartel: I am willing to admit it with the understanding that anything not pertinent to the inquiry will be disregarded entirely in any report that we prepare for consideration.

Mr. Towner: That arrangement is satisfactory, Mr. Director, but the whole thing seems to indicate that the trunk lines which I represent can afford to give these short lines increased revenue in the form of waiver of per diem charges and still be left all the money they are entitled to (Tr. 4813). That is not an issue involved in this case. I am perfectly willing to go along with the suggestion you have made, as I have faith that you won't consider what should not be considered.

Director Bartel: We will accept it with that understanding.

(Said document received in evidence as Exhibit No. 529.)

DONALD S. PAYSON was called as a witness and, being duly sworn, testified as follows:

I am employed by the Traffic Service Corporation as a rate and tariff expert (Tr. 4814).

Mr. Towner: I will concede the witness' qualifications if you are willing.

The Witness: Trunk line carriers generally are today [fol. 1021] absorbing on competitive traffic switching rates that closely approximate the line haul rates of short lines, I have prepared an exhibit to illustrate the fact.

Mr. Towner: Just a minute. I object to that. This case has nothing to do with the absorption of switching charges on competitive traffic, and we are wasting our time spending it on this.

Mr. Hitt: The question has been raised repeatedly in this hearing as to the differences between line haul revenue that the short lines get as compared with the revenue they were allowing to switching roads, and we want to give you some tariff references and also, as a general condition, where the trunk line roads are allowing reclaim on switching traffic that amounts to as much as the line haul revenue of the short lines.

Mr. Towner: Mr. Crawford stated repeatedly (Tr. 4815) in the course of his testimony that the amount of revenue or charge had nothing to do with the application of the per diem rules. That is evident from the rules themselves. Whether or not it is absorbed, or the amount of it, makes no difference.

Director Bartel: I don't see the purpose of this, Mr. Hitt.

Mr. Hitt: The purpose, Mr. Director, is in accordance with the contention we have made all along that the trunk line is arbitrarily basing it on a switching tariff, when the revenues from both classes are approximately the same, and, in some instances, the switching revenue is greater (Tr. 4816).

Director Bartel: Go ahead. I guess we can get it in quicker than we can be arguing about it.

Mr. Towner: The difficulty is that it has nothing to do with the case.

Director Bartel: I appreciate that.

The Witness: Page 1 is a reproduction of the Southern [fol. 1022] Railway Company switching and absorption tariff No. 8 I. C. C. A-10150. I reproduced as pages 2, 3 and 4 every rate in Exhibit 529 for distances less than 15 miles. Page 2 covers the rates applying via standard lines and

pages 3 and 4 cover the rates applying via quicker lines as to which the Georgia Commission has accorded special treatment. These rates move the bulk of the tonnage, and while they are intrastate they closely approximate the interstate levels. Page 5 is a reproduction of the Central of Georgia switching and absorption tariff covering Macon, Georgia. Particular attention is directed to Note 4 where it is said that the exact switching charges previously referred to as applying on the Southern (Tr. 4817) are absorbed whenever a net revenue of $11.25 per car will result to the Central of Georgia. That means that the Southern provides for the absorption of the local tariff charge. I have such information. The tariff has been in effect for many years and is in effect today. On a 50 ton car of coal, for example, the switching charges at Macon would be $14.50. Assuming a reclaim of $3, the total line haul absorption would be $17.50, provided the total charges which the shipper would pay would be $28.75 or more. Let us take also a car of cotton weighing 10,000 pounds, coming into Atlanta via the Southern, and consigned to an industry at Fort McPherson, Georgia, where large quanities of cotton are consumed (Tr. 4818). The switching rate shown on page 6 is 13¢ a hundred pounds. If that rate was cancelled, sheet 1 shows that on the distance of 6 miles the rate would be 17¢ per hundred pounds or 4¢ more than the commodity switching rate. The 13¢ applies on cotton from all connections except the N. C. & St. L. Page 1, item 160, shows that they will absorb this 13¢ which is published as a switching charge. It is just a little less than what the local rate would be if it were cancelled 4¢ a hundredweight. In addition to absorbing 13¢, they allow a switching reclaim [fol. 1023] which, I will assume to be $3, making the total absorption on this hypothetical car $16 (Tr. 4819), provided the total charges paid by the shipper were $31 or more. The reclaim cannot be used in computing the net revenue to a line haul carrier, as it is not published in any tariff, but for the purposes of my illustration I have considered it in computing the net revenue.

Mr. Hitt: I offer the exhibit in evidence.

Mr. Towner: I have the same objection to the exhibit.

(Said document received in evidence as Exhibit No. 530.)
(Tr. 4820.)

Mr. Hitt: We would like to have the privilege of filing, within 10 days, a copy of the negotiations between the American Railway Association and the American Short Line Association, in regard to the change in the per diem rules, that is, Rule 6.

Director Bartel: Have you any objection, Mr. Towner?

Mr. Towner: No, I don't care.

Director Bartel: Briefs will be due July 1, and the hearing is closed (Tr. 4821).

[fol. 1024] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 16420

SOUTH MANCHESTER RAILROAD COMPANY, Complainant,

vs.

NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, Defendant

Before Examiner W. H. Wagner and C. A. Rice

Washington, D. C., January 27, 1925.

Appearances: Robert E. Quirk for complainant; W. W. Meyer for defendant.

(Tr. 1:) Examiner Wagner: The Commission has assigned for hearing Docket 16420, South Manchester Railroad Company vs. New York, New Haven & Hartford Railroad Company.

It is alleged that the per diem rules and charges for car service observed and exacted by defendant on traffic interchanged with complainant are unreasonable. The Commission is asked to prescribe reasonable rules for the future and to award reparation (Tr. 2).

Mr. Quirk: The complainant will undertake to prove that the per diem charge of $1 is unjust and unreasonable as applied to complainants, and that the rules and regulations under which the charges applied are unreasonable; and will suggest in lieu of the present per diem method

the Birmingham Southern or Northampton & Bath principle (Tr. 3).

C. H. CHENEY was called as a witness and, being duly sworn, testified as follows:

I am President and Manager of the South Manchester Railroad, and am also a member of Cheney Brothers, silk manufacturers. I have been officially connected with the railroad since 1907, and am familiar with its traffic, op- [fol. 1025] erating, car hire and car interchange matters. (Tr. 4). The road was incorporated in Connecticut in 1866 as a common carrier. It is a common carrier and holds itself out to haul freight and passengers for all persons. It began operation under its own management in April 1879. Prior to then it was operated by what was then known as the Hartford, Providence & Fishkill Railroad. The main line is 1.94 miles long and it has 1.21 miles of siding (Tr. 5). The road serves 5 industries, including Cheney Brothers, silk manufacturers, which have private sidings, and many other industries which either use private sidings or receive freight at public delivery tracks. The road is owned by Cheney Brothers, an industry which it serves, and which owns 395 shares of stock and controls the other 5. Cheney Brothers is one of the principal receivers and shippers of freight (Tr. 6). Frank Cheney, Jr., is president of Cheney Brothers and vice president of the railroad. Charles Cheney is treasurer of both companies. Robert Cheney is vice president of Cheney Brothers and a director of the railroad. William C. Cheney is director of Cheney Brothers and secretary of the railroad, and C. H. Cheney is president and manager of the railroad. I have prepared an income statement of the road for the years 1920 to 1923 and for years prior to that.

Mr. Quirk: We will offer that exhibit and the other exhibits at this time.

(Said documents referred to received in evidence as Exhibits 1 to 10, inclusive.) (Tr. 7.)

The Witness: Exhibit 1 indicates that the railroad does not pay a proper return on investment. In 1923, operating

revenues were about $50,630 and car hire debits were $7,843 or about one-seventh. In 1923, the car hire debit balance exceeded the net railway operating income by between $1100 and $1200 (Tr. 8). Exhibit 2 shows the cost of road and equipment of the railroad as of December 31, 1923. The Interstate Commerce Commission valuation was a value fixed by the Interstate Commerce Commission as of [fol. 1026] June 30, 1916, and the figures shown are the figures as of that date corrected to December 31, 1923 (Tr. 9). The corrections take care of the changes since valuation date up to that time. The road is a standard gauge road. In 1922, 46% of its tonnage and 47% of its revenue came from Cheney Brothers. In 1923, the tonnage and revenue were 50% from Cheney Brothers. As I understand the Commission's decisions, it is my opinion that the railroad is an industrial common carrier (Tr. 10). The railroad lies in rolling country, the grades not being excessive. The territory includes South Manchester and some territory east, south and west of that. The name of the town itself is Manchester, but the railroad serves that part of it known as South Manchester. The population of Manchester in 1920 was 18,370. I estimate that in South Manchester the road serves a population of between 12,000 and 15,000 (Tr. 11). The nearby farmers also use the road considerably. Exhibit 4 shows the tonnage handled by the road in 1922 and 1923. The largest tonnage handled is of coal, lumber, paper, silks and cement. The coal is inbound and in 1922 and 1923 was 68% of the total tonnage. The road connects at Manchester, Connecticut, with the New York, New Haven & Hartford, which is its only interchange (Tr. 12). In 1923 the road received 3,108 loaded cars from the New Haven and delivered to it 583 loads. 84% of the loaded cars were inbound. In the same year, 2,550 empty cars were returned to the New Haven. Exhibit 6 shows the loaded and empty cars interchanged with the New Haven. Generally speaking, the loaded inbound cars take care of the outbound business, except when a special car is needed (Tr. 13). The road carries passengers on trains operating on a regular schedule, the service being a commuter service between Manchester and South Manchester. The road owns 2 steam locomotives, one passenger coach, 4 combi-

nation passenger and baggage coaches, but no freight cars. None of its equipment is interchanged. It files tariffs and reports with the Interstate Commerce Com-
[fol. 1027] mission and annual reports with the Public Utilities Commission of Connecticut (Tr. 14). The Connecticut Commission does not require the filing of tariffs. The road is not a member of the American Railway Association, but subscribed to the Per Diem Agreement in January, 1903. It withdrew in January, 1914, and has not been a subscriber since. We withdrew because as a subscriber we were obliged to pay per diem which we thought was unjust and unreasonable. As subscribers it was also required that our settlements be made with every carrier that owned cars we used. The charges were usually in small amounts requiring small checks to various roads all over the country (Tr. 15). At the present time we are not making any settlements under notice of July 1, 1924. Before that we settled at the per diem rate the same as if we were a member, except that we did it with the New Haven only. From July, 1893 to January, 1903, we paid car hire on the mileage basis at rates ranging from .6¢ to 1¢ a mile. Exhibit 7 shows the car hire changes in effect from 1893 to July 1, 1924. The road is a party to joint rates (Tr. 16). They apply on most of the traffic except coal. Our divisions are on the basis of arbitraries, the road being allowed an arbitrary which is deducted from the through rate before the revenue is prorated. Coal, constituting 68% of the total tonnage, does not move under joint rates. We have made an effort to induce the New Haven to establish some other rule than straight per diem but the efforts have been futile. The New Haven said they would not consider any other plan (Tr. 17). We suggested to the New Haven the Birmingham Southern rules. Our line is a very short line and performs a switching service which in effect is service for the trunk lines. In effect it performs a service contemplated in the rate charged by the trunk line, and since we do the work we should get that part of the revenue contemplated in making the rate. Exhibit 9 shows the average detention or per diem paid in 1923 and what would have been paid
[fol. 1028] under the Birmingham Southern rules. Our average detention per car is 2.15 days (Tr. 18), and per

diem in 1923 was $7,843. Under the Birmingham Southern basis it would have been $913, or 11.6¢ per car per day. The South Manchester has never had a switching reclaim arrangement with the New Haven. We oppose straight per diem because our road performs what is essentially a terminal service and is as much entitled to free time as a switching line that gets it under reclaim. For years it has been the custom of trunk lines to treat short lines as feeders and terminals. Our road does not own a sufficient number of cars to handle the interline traffic which it originates (Tr. 19) and is not financially able to buy enough cars to handle the traffic it originates. In view of the cars made empty on our road, I would consider this as an addition to the expense of operation without increasing revenue. I think that would be true as to all roads under similar conditions. If we bought our own cars it would cause the handling of more empties and would increase car surplusage throughout the country (Tr. 20). I think the past treatment of short lines by trunk lines justifies a special rule applicable to short lines. The only road that I know of connecting with the New Haven which has a basis of car hire different than per diem is the Moshassuck Valley, in connection with which the Commission made a decision. I am familiar generally with the methods of settling car hire between trunk lines. It is a debit and credit method and the settlement is made monthly. The South Manchester cannot offset credits against debits as it has no cars (Tr. 21). If we bought enough cars to offset debits with credits, I think it would alter the case a great deal, as the cars we would have to own would be practically nothing compared with the volume of traffic that exists on the road. It has no repair facilities and the number of cars involved would not justify such an establishment. To get repairs at the New Haven shops would require a charge for transportation. [fol. 1029] In view of the large number of cars made empty on the road, I don't think the purchase of cars by it would solve the problem. I am familiar with the Valley & Siletz case, 80 I. C. C. 724, and see no difference between that road and the South Manchester so far as car hire is concerned (Tr. 22). I think the Valley & Siletz was 39 miles long and our road is less than 2 miles. I

am also familiar with the Moshassuck Valley Case, 69 I. C. C. 368, and see no distinction between that road and the South Manchester so far as car hire is concerned. In the Moshassuck Valley Case, the traffic of the proprietary industry is greater than in our case, and the facilities for serving the public were limited as compared with ours. In the Moshassuck Valley Case, the detention was 5 and a fraction days, whereas ours is 2.51 days (Tr. 23). I have prepared a statement showing the ratio of the average per diem to the average revenue on our road, which is Exhibit No. 10. This exhibit classifies the commodities on the basis required by the Commission in our report to it. Average per diem is 39.25% of average revenue in the case of products of agriculture (Tr. 24). Reclaim is allowed by trunk lines to switching lines because it recognized that the switching line is justly entitled to its proportion of the rate. It is designed to cover the service performed by the switching road or short line (Tr. 25).

Cross-examination:

As I recall it, the changes in the per diem charges from 1911 to 1924 were put in force by the American Railway Association and I have understood the amounts were reached in conference. I have understood in many cases that the rate was less than the average cost of maintaining freight cars. I don't know that $1 per diem represents the present average cost, but I have heard it said many times that it did not (Tr. 26). In the third column of Exhibit 9 is shown the number of days which the cars were on our road, beginning when per diem begins and running to the [fol. 1030] time when per diem ceases. It begins at midnight after the car is placed on the interchange at Manchester, the siding being owned by the New Haven, and ends at midnight after the car is placed on the interchange by our road. The detention is made from our record and the figures correspond with the New Haven figures and are the basis of settlement with the New Haven (Tr. 27). The months shown have all been paid for and accepted as correct by the New Haven. The charges shown under the Birmingham Southern basis on the same exhibit make allowance for credits and show what would actually have been paid if we had been on that basis. The average detention per car means the time between the time we receive the car

until we deliver it back. I think the average number of cars on our road per day could be computed from the exhibits (Tr. 28). The average number of loads and empties could also be determined. Our road has no joint rates on coal. Where we do not have a joint rate our proportional rate is added to the New Haven rate. We have no local traffic; it is all joint (Tr. 29). I can illustrate my statement that some roads should have a rule other than straight per diem. If a car of coal is consigned to Manchester for delivery on the New Haven, that road must do certain switching, particularly at a private siding, and must allow free time for unloading or reconsignment. This would occupy 2 days or more. If the car is a foreign car, the New Haven has to pay per diem on the car. If a car of coal is consigned to South Manchester, the New Haven is relieved of switching and a certain amount of per diem, yet gets the same revenue on the car consigned to South Manchester for a lesser service than it does for the car consignee to Manchester (Tr. 30). That would be true of any shipments passing over two or three roads where the through rate is a combination of locals. I think that in all such cases the delivering carrier should get its full rate. I do not think that if the New [fol. 1031] Haven is a delivering line for trunk lines west of the Hudson it should be relieved of per diem, as I make a distinction between trunk lines and switching or terminal roads. We get an arbitrary out of joint rates for our service performed in South Manchester (Tr. 31). That division was promulgated around 1914 and 1915. Prior to then, I think there was one joint rate in existence and that was on imported transcontinental silk. Prior to Federal control, we paid straight per diem to the New Haven, although we were not a subscriber. We also negotiate our divisions with the New Haven (Tr. 32) and they were negotiated when we were working under straight per diem without being a subscriber. I cannot tell what proportion of our detention was chargeable to shippers. I am inclined to think that the adjustment of these matters should be dealt with separately from the adjustment of divisions, but any method that accomplishes the desired end is not to be criticized. We apply the National Demurrage Rules, and I think some of our shippers have the average agreement (Tr. 33).

JAMES E. ROWLAND was called as a witness and, being duly sworn, testified as follows:

I am Assistant to the President and Superintendent of the South Manchester Railroad, and have examined the car reports issued by the American Railway Association. I am familiar with the car surplus at different times in the years 1923 and 1924 (Tr. 34). In 1923 particularly there was a surplus for about 8 months of cars of various kinds. For the balance of the year requirements were slightly in excess of supply. In 1924 the tonnage was not as great as in 1923, and there was a continual car surplus throughout the entire year, ranging up to 399,000 cars. As of December 31, 1924, there was a surplus of all cars of 266,252 with a shortage of 101. The interest charges to carry 250,000 surplus cars amounts, I think, to about $1,000,000 a day, but I have no personal knowledge (Tr. 35). Mr. Cheney [fol. 1032] was in error when he said we had no through rates on coal. We have through rates on coal with the New Haven from New Haven, New London and, possibly, Stratford. The rate is made by combining the New Haven rate to Manchester with our local beyond, but is published as a joint rate (Tr. 36). I can tell what proportion of our detention is due to shippers by saying that all our empties are picked up in the afternoon and taken to Manchester. The loads are pulled down in the morning and also in the afternoon. If a car is made empty prior to 7 A. M. the period from then to 3 A. M. would be on our line. It is not possible to make more than two movements a day. I do not regard our road as a straight switching road, as it is a common carrier doing an essential terminal service over a number of private sidings and public delivery tracks. I understand that a switching road does not operate private side tracks (Tr. 37). We have no local traffic. I can only recall one local shipment. I can only judge the length of haul received by the New Haven on our traffic from the transfer billing. From Springfield, I think the mileage is around 30 miles; to Harlem River is around 120 miles. Most of our coal traffic is all-rail coal (Tr. 38). I am not familiar with the figures showing the allowances which trunk lines absorb as switching charges. I have observed the average revenue per car received by the South Manchester, as shown on Exhibit 10. I know of the Indiana Harbor Belt at Chicago (Tr. 39). I do not know what its

switching allowances are, but I have heard of such allowances up to $15 a car. There must have been some tidewater coal for Manchester, but I have no personal knowledge of it. It may be possible that in the last 3 months 1,355,600 pounds of coal were shipped from New Haven, but I do not know (Tr. 40).

C. W. CRAWFORD was called as a witness and, being duly sworn, testified as follows:

I am Chairman of the General Committee Trans- [fol. 1033] portation Division, of the American Railway Association, and have been with that Association for 12 years. Prior to that, I was in railroad service for about 10 years. The American Railway Association is a voluntary organization of steam common carriers in the United States, Canada and Mexico. Since its organization a large part of its activities have been devoted to the formulation of rules to produce efficiency and economy in handling freight cars (Tr. 41). It has formulated rules to govern settlement for the use of cars, known as the Per Diem Rules; also rules governing the handling of cars known as Car Service Rules, and rules to govern interchange and repair of cars known as M. C. B. rules. These three sets of rules are closely allied and are based upon the recognition of ownership in the handling of cars. The Per Diem Rules were adopted by the Association in 1902. Prior to then cars were interchanged on a mileage basis but this system was unsatisfactory for a number of reasons. Per diem rules are enforced between carriers under what is known as the Car Service and Per Diem Agreement, under which the subscribing road agrees with every other subscribing road that it will abide by and enforce the rules governing the handling of and settlement for freight cars (Tr. 42) contained in the Car Service and Per Diem Rules of the Association. I have a pamphlet containing the Per Diem Rules and Per Diem Agreement.

(Said document received in evidence as Exhibit No. 11.)

The Per Diem Agreement is executed by the chief executive of each railroad and filed with the Association and the Interstate Commerce Commission. Rule I fixes the rate for

the use of freight cars at $1 per car per day. To determine a proper rate, the Association appointed a special committee in May, 1909, which studied the question and submitted a report which was adopted. I have a copy of the report with me.

(Said document received in evidence as Exhibit No. 12.) (Tr. 43.)

Since this report was adopted, it has been used as a basis [fol. 1034] to fix the per diem rate which has included cost of repairs, cost of replacements and depreciation, taxes, interest and incidental allowances. The cost of these items is obtained annually by the Association from its members, and these figures were used in 1920 to fix the rate of $1 per car per day. I have a statement showing a tabulation of the reports for the years 1919 to 1923, showing costs on two and a half million freight cars, or 96% of the total car ownership in the country.

(Said document received in evidence as Exhibit No. 13.)

The statistics showing the average cost of owning a freight car in 1920 was 99.8¢ (Tr. 44). The proposal to make the rate $1 was submitted to the members of the Association and was approved by 285 railroads owning 2,166,425 cars an almost unanimous approval by railroads representing most of the mileage and freight car ownership of the United States. The average cost per car shown in Exhibit 13 is the original investment shown on the books of the carriers. 732 railroads subscribe to the Per Diem Agreement and operate over 95% of the railroad mileage in the country. About 480 short lines, industrial roads, tap lines, etc. do not subscribe. To provide a uniform method of settlement for car hire with nonsubscribers Per Diem Rule 6 was adopted (Tr. 45). It provides that if a subscriber delivers a car of a subscriber to a nonsubscriber, it shall be responsible to the owner for the per diem while the nonsubscriber has the car; that the owner will accept settlement for the use of the car only from the delivering subscriber which shall make settlement with the nonsubscriber (other than roads which have been declared industrial common carriers), at the regular per diem rate without free time or reclaim. About a year ago, the Association made a canvass to determine the extent to which Rule

6 was being enforced, and found that over 350 nonsubscribers were settling under Rule 6 at the per diem rate [fol. 1035] without free time or reclaim. In many cases the question of settlement was in dispute. About 20 roads were settling under the Birmingham Southern Rules which had been prescribed by the Commission. A number of tap lines were settling on a straight demurrage basis with 48 hours free time (Tr. 46) and in some cases there was a question as to whether or not the road was a common carrier. The theory of Per Diem Rule 6 is that all eligible common carriers should subscribe to the Per Diem Agreement so that payment for the use of foreign cars by them should be uniform and free from discrimination; also that all common carriers should assume their obligations as such. One is to provide a proper share of the cars using interline traffic and a sufficient number of cars to handle traffic. Another obligation is to account to the owner for foreign cars used and keep them in repair. We think the rules are reasonable and have accomplished the purpose sought by the framers. I think they have produced efficiency and economy, as in 1923 and 1924, when the carriers handled the largest volume of traffic in their history, there was no car shortage or complaints from shippers (Tr. 47). The per diem rate provides an incentive for the prompt movement of equipment and applies every day including Sundays and holidays. To remove the incentive by modifying the per diem arrangement would be a serious blow against car efficiency and would, I think, interfere with the application of car service and interchange rules. The three sets of rules are closely allied, and unless any changes are based upon sound principles the efficiency which the carriers have gained is going to be lost. The Commission prescribed the Birmingham Southern Rules on about 20 roads. It condemned the per diem and reclaim plan because it thought reclaim might be used to increase allowances paid to industrial roads and because the controlling industry could hold cars beyond [fol. 1036] the free time and escape demurrage charges, because if it paid demurrage to its own railroad it took money out of one pocket and put it in the other (Tr. 48). In January, 1924, the Secretary of the Commission asked me if the interested carriers would apply the Birmingham Southern Rules to all industrial roads. I took the matter up with my

committee and consulted the interested trunk lines. I then advised the Secretary that in our judgment the Birmingham Southern Rules did not promote car efficiency as much as the per diem rules; that they were unjust to the trunk lines; and that we could not see any reason for extending those rules to additional roads. I then asked each trunk line to further investigate the operation of the Birmingham Southern Rules, and in November, 1924, wrote to the Secretary recommending that the Birmingham Southern cases be reopened (Tr. 49). That request is still before the Commission. The report of the Commission at 78 I. C. C. 475 recognized that an administrative question of great complexity was presented and that nothing in the report should be taken as preventing an application for modification of the rules (Tr. 50). The application that we filed was on behalf of the lines named in that opinion. The letter I wrote was written on behalf (Tr. 51) of the Committee, after obtaining the views of the trunk lines. We got concurrence of the trunk lines before we made the request to the Commission. It was not a formal petition, but simply a recommendation. The names of the roads were not stated and I said that we made the request after obtaining the views of those roads. The request related to all cases bearing on the Birmingham Southern Rule. We think that is the best way to settle this question, as all industrial switching roads ought to be treated alike, as conditions are substantially similar (Tr. 52). I don't know how car hire rules can be based on length of haul or amount of revenue. They must be based on a sound principle so that everybody can [fol. 1037] be treated alike. A number of objections to the Birmingham Southern Rules have developed. They have not accomplished the purpose sought by the Commission but have really increased allowances to the industrial roads. In one period of 6 months the industrial roads in Chicago paid for car hire under the Birmingham Southern Rules $85,000 less than they would have paid under the Per Diem Rules. The Birmingham Southern Rules also give industrial roads more free time than the per diem arrangement (Tr. 53). The rules are based upon an average free time which is further increased by the use of credits to offset debits, so that a car can be used 14 days without the payment of compensation. Under the per diem plan, an in-

dustrial road had to pay the owner per diem for every day including Sundays and holidays and could only reclaim the average number of days required by such line to handle the cars in switching service, subject to a maximum of 5 days. Many industrial switching roads handle cars in less than 3 days and a number that we checked handled cars on an average of 2 days. Applying the Birmingham Southern Rules to these roads allows them to slow up the movement. The statements that I am making are the conclusions of my General Committee and are my own conclusions (Tr. 54). I think they are facts. We think the Birmingham Southern Rules have operated against car efficiency by allowing more free time than is necessary and in not providing an incentive for the prompt handling of cars. Another objection to them is the excessive cost of accounting, which is particularly marked in the Chicago switching district. It is almost impossible to keep track of diverted cars (Tr. 55). They have promoted delay to cars loaded with company material, without any payment; whereas, under the per diem and reclaim rules per diem is paid without reclaim for every day that a car of company material is held. The Birmingham Southern Rules do not define the responsibility [fol. 1038] of industrial carriers with respect to damage or destruction of cars and put no responsibility on the carriers for the proper handling of cars under the Car Service Rules. They furnish no incentive to a railroad to buy its own cars. These, briefly, are the objections that have developed from our investigation. The earnings of short lines should be derived from proper divisions and not by special allowances with respect to car hire (Tr. 56). I think the Commission was right in the New England Divisions Case, 62 I. C. C. 538, when it said that the record showed that per diem had not been a factor in the determination of divisions, and that if it were so considered an essential purpose of per diem would be nullified. I think a car owner is entitled to adequate compensation for the use of his car by another railroad; that the rate should be uniform; and that every common carrier should be required to pay it.

Cross-examination:

I did not know that the matter of the responsibility of the industrial line was one to be settled under the law of

the land (Tr. 57). Cars containing company material can be delayed under the Birmingham Southern Rules without payment, because they allow an average free time of 3 days. Under the per diem rules $1 a day has to be paid on such cars as long as they are held, and no free time or reclaim is allowed. That matter is not now met by the Birmingham Southern Rules. The roads are holding their company fuel 10 or 12 days and paying nothing (Tr. 58) because they have enough credits to offset debits. That is not an impossible thing to solve, but it is a present difficulty in the rules. The number of free days under those rules has been modified. In Chicago it has been increased to 4 days. It could be made to fit the needs of a particular short line, but can be just as badly abused as the reclaim. I meant that the [fol. 1039] trunk lines in Chicago had complained of the cost of accounting under the Birmingham Southern Rules. They complained to the General Managers Association in a report sent to the Commission (Tr. 59). The short lines did not complain as accounting was costing them nothing. Those roads are the Illinois Northern, Manufacturers Junction, Pullman Railroad and Chicago Short Line. They did not actually seek the Birmingham Southern Rules and some of them opposed them. When these rules were first started, I thought the Commission had reached a solution of the question and tried to go along with it. We started to suspend industrial roads from the Per Diem Agreement (Tr. 60). The Indiana Harbor Belt and Baltimore & Ohio Chicago Terminal have filed petitions with the Commission asking a reconsideration of its decision prescribing the Birmingham Southern Rules in Chicago. I think those roads have a peculiar situation, but I understand that the balance of the railroads are preparing a form of petition which will probably be filed within the next few days. I said that the industrial roads in Chicago would have paid $85,000 more under the per diem arrangement than they paid under the Birmingham Southern Rules (Tr. 61). Those rules went into effect about July 1, 1923, and my 6-months period was July to December, inclusive. Prior to then reclaim was allowed on business originating at or destined to points beyond the Chicago switching district, but did not apply to terminal business. Prior to June 1, 1916, a special reclaim was allowed on intra-terminal busi-

ness (Tr. 62). The 42 roads named handled a substantial amount of inter-terminal business and the Birmingham Southern Rule applies to all of it. The figures I gave were a comparison of what happened in 6 months with what would have hapened in the same 6 months under the per diem arrangement. There was no reclaim in the Valley & Siletz Case. I am not familiar with the Moshassuck Valley [fol. 1040] Case (Tr. 63). I don't know why the Commission applied the Birmingham Southern Rules in the Valley & Siletz Case. I based my opinion on the Northampton & Bath and Birmingham Southern Cases. If the Birmingham Southern Rules are justified on the Valley & Siletz I think they ought to apply to the South Manchester, but I do not think they are justified in either case. The South Manchester would not be entitled to a switching reclaim. It applies only to a road that performs switching service at a switching rate and does not apply to a road that participates in divisions of joint rates (Tr. 64). The Indiana Harbor Belt at Chicago participates in some through rates, but gets no reclaim on business handled under them. If that road handles any traffic under a through rate it does not get a reclaim on that traffic. The E. J. & E., in the Chicago district, receives no reclaim because it gets a division on all its business (Tr. 65). We distinguish between roads entitled to reclaim and those not entitled to reclaim by the character of revenue received, because that is the best method we had of drawing the line. No division can be made on the basis of length of haul or the amount of the charge, as some roads get very large divisions of joint rates. If they were on a switching charge, it might very much reduce the revenue. We have taken the position that the reclaim is intended to make a switching line whole on the service performed for the carrier line, not as a part of the through movement but as a terminal switching movement (Tr. 66). I would not say that the South Manchester should necessarily own any cars. I know nothing about the road. If the average number of cars on its line is about 3, and they owned 3 cars that were off their line all the time, they would almost equalize their per diem. I have never maintained that a road like it should buy cars. The primary purpose of the per diem is to cause the user of a car to pay to the owner the same amount the user would

have to pay if he owned the car, but it also has the effect in actual practice of causing the return of cars to the owning [fol. 1041] lines (Tr. 67). I don't think there are any penalty features in the per diem rate. On the basis of the report in 1909, the policy was adopted of equalizing the per diem charge with the cost of maintaining a car. I think it does so in every year except in 1921 and 1922. In 1920 the cost is 99.8¢ and the charge was made $1 in that year. The per diem rate was restored March 1, 1920 (Tr. 68). I do not know what charges the South Manchester paid but those were the per diem rules. In 1902, when per diem was adopted, the charge was 20¢ a day, but there was really no basis for that amount. It was then made 45¢ a day and remained that until 1916. It was then 75¢ a day for a short time and then went back to 60¢. The reason the rate was not modified in 1921 and 1922 was because it was felt that the figures for those years were not correct because influenced by the shopmen's strike and the coal strike. The per diem rate is designed to bring cars back to the owning line (Tr. 69), but the rate does not include any penalty. The arrangement is to provide an incentive to keep a car moving. A car can be delayed 14 days under the Birmingham Southern Rules without cost, because 3 days are allowed free and 4 days can be offset by credits, which makes 7 days on an inbound movement. If the car is sent outbound loaded that makes a total of 14 days. Under the demurrage rule, a car loaded both ways is counted as 2 cars, but it is the same car. If a concern is working under the average demurrage agreement and delays the inbound load 8 days, there are 2 free days and 2 arbitrary days at $5 a day. Under the Birmingham Southern Rules there is no division between the unloading and the loading operation. It all goes into one (Tr. 70). Four credits could be claimed on the inbound move and nothing paid for the detention. If a car was detained 14 days under per diem, $14 would be paid, but in the case of a switching road with a 3½ day [fol. 1042] reclaim, it would get that much per diem back. In computing reclaim, our rules eliminate detention beyond 8 days in arriving at the average. I don't see how a car could be detained 16 days under per diem without payment (Tr. 71). In arriving at the average of all cars switched to get a reclaim, all detention over 8 days on one car is excluded. The excess detention on a 8 day car under per diem

cannot be offset by cars detained less than 5 days, as the average is lower. 3 days is allowed under the Birmingham Southern Rules, whereas a road's actual average might allow a 2 day reclaim. If 4 cars are released in 1 day and 1 car in 8 days, there are 12 car days with an average of 2-2/5 days per car under reclaim (Tr. 72). I think the average free time under the Birmingham Southern Rules is more than 3 days. If that was all that was allowed, the rules might be all right, but where debits can be offset with credits under an average agreement the roads get all the free time they can use without paying anything. Under our rules, the average is subject to a maximum of 5 days. The free time under the Birmingham Southern Rules is 4 days at Chicago, whereas the same roads got about 3½ days reclaim under the per diem rules. I don't know what the comparative detention at Chicago is (Tr. 73). Under reclaim the average is subject to a maximum of 5 days but reclaim is figured on the actual average which at Chicago is about 3½ days. Under per diem rules the average can be figured down to one-tenth of a day, but under the Birmingham Southern Rules fractions of a day are not figured. Under the Birmingham Southern Rules a road in many cases gets more free time than it uses because the Commission made a mistake in using 3 days as a basis (Tr. 74). I think the Birmingham Southern Rules are fundamentally wrong and could not be cured by modifications. I have not always thought that way. I don't think the Chicago situation is representative of the situation throughout the country, as some objections to the Birmingham Southern Rules are more marked there than in other territories. That is [fol. 1043] because of the rule itself, because of the territory, and because the switching district is so complicated (Tr. 75). I would say that accounting, so far as the New Haven is concerned, would be about the same under the Per Diem Rules and the Birmingham Southern Rules. The trunk line carriers complain of the accounting at Chicago. A New Haven car might be delivered to the Pullman Railroad, and the road delivering it is responsible to the New Haven for per diem. If the car goes to the Chicago Short Line, the delivering road is still responsible to the New Haven. The car may finally be sent out over another road, and in order to clear the record, the road that delivered the

car to the Pullman has to go through all the records and find out what became of the car to terminate its responsibility. Under the Birmingham Southern Rules the trunk line has more accounting to do than the short line, whereas under per diem the situation is somewhat reversed (Tr. 76). The Birmingham Southern Rules require more accounting than the per diem arrangement. The Chicago Short Lines did not seek the Birmingham Southern Rules, but opposed them. I think the Commission must do the same thing, not only in the Valley & Siletz Case but in this case and with 500 other roads. I believe in un-formity but think the yardstick is improper. A chief objection to the Birmingham Southern Rules is that a road which receives a division is not only relieved of per diem charges but also of any obligation to furnish equipment (Tr. 77). The South Manchester is eligible to membership in the Per Diem Agreement if it is a common carrier. The rules require the New Haven to settle with it at straight per diem, subject to Rule 6, which is mandatory as far as we can go. If the New Haven does not do that, it violates the agreement (Tr. 78). The rule does not permit the New Haven to depart from its provisions at its discretion even if they regard the basis as inequitable. As a subscriber, [fol. 1044] the South Manchester would get no more liberal treatment with respect to per diem than as a nonsubscriber. If the shippers and consignees on the South Manchester were on the New Haven, it would be obliged to allow them 48 hours' free time for loading or unloading but our rules do not permit the New Haven to share that expense while cars are held under per diem for loading or unloading on the South Manchester. I do not think it is right for the carriers to share in that (Tr. 79). I think that the originating and terminating of freight is part of the transportation service that the terminal line assumes. No car hire regulations on any uniform basis could be provided that would take unloading time into consideration. Many trunk lines want the short haul on some business, and I do not know that they average it up in the long run. I think that divisions should be dealt with entirely separate from the question of car hire and maintenance. Even if interline cars are handled for the benefit of all carriers, I do not think that the complainant should be relieved of bearing the entire burden of the expense. It should earn its revenue

out of divisions or rates and not through a special car hire arrangement (Tr. 80). I think that a car is in transportation service the same as on any other line while it is in the possession of the complainant. This road gets a short haul on a large volume of traffic and allows a consignee 48 hours to unload. Many cars are not held that long. 85% of the total cars reported under demurrage rules are released in 48 hours and 35% are released before free time starts. If free time is allowed because a road gets a 2 or 3 mile haul, a principle will be established that a road getting 10 miles or 20 miles or fifty miles or a 100 mile haul is in the same situation. It is wrong in principle (Tr. 81). This road may have received 2 days' free time during Federal control, but the roads receiving that free time were roads which signed the waiver of claims contract, and a [fol. 1045] special concession was made to them. I don't know how the contract affected complainant, but that is the reason the 2 days were allowed. It was not because they were entitled to it from a standpoint of car hire. Many cars are delivered to consignees during the forenoon between 7 o'clock and 11 o'clock. Under demurrage there is practically a working day free on those cars before time starts under the rules at 7 A. M. on the next day. That is what I meant when I said that demurrage allows an additional working day's time on thousands of cars (Tr. 82). I don't know that the free time would be offset if the cars are delivered to the carrier on the return trip at the same hour. It has been suggested to me that some railroads, in order to get business, hold back deliveries until 7:30 the next day in order to give the industry an extra day. An additional day free time is not allowed when a car is delivered at 12 o'clock under the reclaim rules. Per diem starts at midnight (Tr. 83). I don't think that a shipper would have the same chance of getting the free time under per diem as he does under the Birmingham Southern Rules. It might be possible under the reclaim rules to favor an industry, but it would be unlawful to do it. Per diem accrues on the first minute after midnight, and it makes no difference where the car is the rest of the day. Demurrage is not paid after 7 o'clock. The free time starts (Tr. 84). I do not think there is the same incentive for prompt handling under the Birmingham Southern Rules. We have checked the records of a number of industrial roads. Many of

them can handle cars from 2 days to 2½ days, and they do not have to hurry under the Birmingham Southern Rules where they get 3 days. They can take their time and will not have to pay anything for car hire. Under per diem they have to hurry because they are paying per diem and if they do not hurry up under the reclaim plan they are out-of-pocket in a great many cases. The 3 day average under the Birmingham Southern Rules does not hurry them [fol. 1046] (Tr. 85). There might not be any practical difficulty in applying a special rule to this road, but you have 700 other roads and if you put it in effect on one it must go into effect on the others. The Commission asked us if we would put their rule in on all the others, and we said "No". I don't see how there can be one rule for Cihcago, another for Birmingham and another for some place else (Tr. 86). I think uniformity in principle is entirely possible. It is certainly not a curse in the railroad business, as the Commission has considered it the best thing for the railroads, the shippers and the public. I don't know that there would be any difficulty in the application of a rule allowing this road 2 days' free time, but I don't know that they would be entitled to 2 days' free time (Tr. 87). There might be a good deal of difficulty in the plan. If a shipment came from San Francisco to South Manchester, one road might get 40% of the through rate, another 25% and the New Haven about 10%. I don't see how the responsibility can be divided between all the parties to the haul. This road would be compelled to settle with the New Haven, its direct connecting carrier, because the New Haven has to pay per diem to the car owner, but even if the reclaim was allowed by the connecting carrier there would be difficulty, as it would be getting into a question of divisions (Tr. 88). I understand that the Director General allowed 2 days' free time only to short lines that signed the contract and a waiver of claim. That applied to some roads more than 100 miles long (Tr. 89).

MOULTRIE HITT was called as a witness and, being duly sworn, testified as follows:

I have had considerable experience with the Car Service and Per Diem Rules. I worked for various railroads for

16 years, and was also Secretary of the General Managers Association of the Southeast, and attended various committee meetings of the Car Service Association (Tr. 90). The [fol. 1047] last 4 years I have been Assistant to the President of the American Short Line Railroad Association. No other question has caused as much complaint and dissatisfaction as the per diem basis as now applied to short line railroads. We now have an engagement with the American Railway Association to confer on the subject. I have a copy of a letter filed with the Interstate Commerce Commission in January, 1925, protesting against the abandonment of the Birmingham Southern Rule in Chicago without a hearing. The general view of the Short Line Association is presented in these letters. There is attached to the letter a statement I made before the American Railway Association on April 30th (Tr. 91), when I tried to arrange for a conference to discuss the proposition.

(Said document received in evidence as Exhibit No. 14.)

We think that undue emphasis is laid upon the question of uniformity. The American Railway Association has said that the Car Service and Per Diem Rules were not always intended to be enforced with strictness, and where there was a local situation which the rules did not fit, the lines should get together and arrive at a local understanding. They do not seem to want to apply that principle to the basis of car hire with short line railroads and insist upon the enforcement of paragraph B of Per Diem Rule 6. Many subscriber trunk lines have stated informally that a strict application of straight per diem was not fair in some instances (Tr. 92), in connection with their short line connections, but that they felt bound to carry out the rules which demanded uniformity. We said to the American Railway Association that we were willing to go with them on uniformity so far as it is reasonable to do so; that the rules could contain a uniform provision as to free time; and that they ought to cut out Paragraph B of Rule 6 and allow subscribers to make any arrangement with short lines that are adapted to the circumstances. Before Paragraph B of Rule 6 was adopted, such individual arrangements were made and the free time [fol. 1048] ran from 2 to 5 days. It was a matter supposed to be adjusted to the local situation (Tr. 93). One cause for changing the rule, so we were told, was that some short

lines brought traffic pressure upon the trunk line connection to give a larger allowance of free time or increased divisions, but I know of no such case. There has been talk of them, but I know of no case that has actually happened. I think the American Railway Association has gone too far in trying to cure a theoretical evil which the lines themselves could cure. When the short lines were built it was recognized that they could not equip themselves with cars, and it was a common thing for the trunk line road to say to the short line that it would not have to bother about cars; that they would furnish the cars as needed and be glad to do it in order to get the business. It would be out of the question for most short lines to supply themselves with the proportionate number of cars needed in their business (Tr. 94), as the Commission knows the short lines as a class are up against it, and I was recently told that there were 40 applications for abandonment pending at that time. It is very well to talk about a carrier discharging all of its obligations, including the one of supplying itself with cars, but many trunk lines themselves do not do that and most short lines could not do it. It seems to us that if a line having a short haul has to give a shipper 2 days' free time and has a delay in handling a car, it is bearing a disproportionate part of the car hire expense when the shipment is considered as a whole (Tr. 95). I amagine that the proportion of car hire expense to revenue on the South Manchester would exceed the same proportion of car hire expense to revenue on the New Haven by several hundred per cent. We say that the ideal arrangement would be to make an allowance for all lines to take care of terminal delay, but the American Railway Association says that this is too complicated in the case of the larger roads, and we recognize that. The per diem rules, as now operated, are [fol. 1049] on a reciprocal basis. What a road loses at one point it gains at another. It would be easy to pick out many flaws in the per diem rules, but on the whole the roads consider that for the sake of uniformity and the offsetting from one side or the other, it was for their interest to participate in them. I have in mind one subscriber road that gets a large number of cars delivered to it after midnight and delivers them to its connection before the next midnight (Tr. 96) and therefore pays no per diem on hundreds or thousands of cars in a year. I

cannot name any rule that is not subject to some abuse, but the per diem rules are not so perfect but that they ought to be applied to everybody. I did not mean that the example I cited was an abuse of the rules; it may be something to be commended. I am speaking now of the application of per diem rules as between the carriers themselves. A shipper is not interested in the per diem rules; he is interested in the demurrage rules (Tr. 97). The allowing of an extra free day under demurrage rules would apply equally to per diem, so that what applies in that respect to one rule would apply to another. The present per diem rules are not so complete that they apply to all conditions. It is a matter of reciprocity between the subscribers, and that basis should not be arbitrarily applied to roads that have not signed the agreement. While the Birmingham Southern Rule originally applied to industrial railroads, the same principle is involved in the case of the line haul short line carrier. It is a question of making a provision to offset the disadvantage of the excessive proportion of car hire expense under straight per diem rules. The principle has been recognized by the American Railway Association in its reclaim rule, which provides that a switching road which gets a small revenue should not be required to pay per diem out of that revenue (Tr. 98). This is not different in principle from allowing a line haul carrier getting a small revenue to also get a reclaim to equalize the car hire burden. We differ with Mr. Crawford's statement that the Birmingham Southern [fol. 1050] basis removed the incentive for the prompt handling of cars, and think the opposite is the real effect, because after free time the rate is $2 for 4 days and $5 a day thereafter. The short line railroad gets shippers to unload and release cars as soon as possible, so that they will not have to pay this higher rate. They cannot control the time taken by a shipper to load or unload and that time will in most cases average pretty close to 48 hours (Tr. 99). The distinction between allowing lines doing a switching business a reclaim and not allowing it to lines doing a line haul business is arbitrary. The source of the revenue makes no difference. In some cases a switching charge is greater than a line haul charge. Railroad Administration restricted the 2 day free time allow-

ances to lines that had signed the contract or waiver, but it was a concession which recognized the fact that many short lines had been allowed 2 or more days free time prior to Federal control, and that the discontinuance of the allowance would be a disastrous matter. The Railroad Administration recognized that and allowed them 2 days' free time, but made it a part of a general contract (Tr. 100) requiring short lines to waive claims against the Railroad Administration. The South Manchester is a member of the American Short Line Railroad Association. In my Exhibit 14 I refer to a conversation which I had with Director Bartel in which he indicated that he thought it would be improper for the Commission to consider the recommendation which Mr. Crawford made recommending that the Birmingham Southern Rule be reconsidered (Tr. 101). I think the Commission might change the application of the Birmingham Southern Rules in Chicago without injuring the principle of the decision as applied to other industrial roads or short lines. I don't say that there should be a modification at Chicago, but the conditions are peculiar and the Commission might prescribe some other basis. Some other basis might be applied because of the complexity of the interchange. No-[fol. 1051] body disputes that these switching roads at Chicago should be given free time in some form or other to offset the heavy expense they are required to pay (Tr. 102). I think the Birmingham Southern Rules should be applied to industrial lines, tap lines and coal switching lines with modifications that may be necessary. It is not practical to apply a uniform rule. On the E. J. & E., for example, the Birmingham Southern Rule, or any other kind of a reclaim rule, might not be fair. I would apply the principle to origin and destination lines or intermediate short lines (Tr. 103), although with intermediate roads there is no free time allowance to shippers. It might not necessarily be applied to intermediate roads, but I know no such road. That traffic is generally such a small part of the total business that I don't think it should affect the general treatment.

Cross-examination:

I don't think the Birmingham Southern Rules should be applied without regard to the measure of the divisions or

rates. It should all be taken into consideration (Tr. 104). The two factors enter into each other. If the division were sufficient to take care of the extra expense, that would be one solution, but the traffic officer says that the short line must bear its responsibilities as a railroad, and that he knows nothing about car hire and per diem. When the short line goes to the transportation man and tries to talk to him about free time he says that it ought to be taken care of in divisions and to see the Traffic Department. In this fashion the matter is not adjusted one way or the other. We see no necessity for per diem being taken care of in the division, but think it ought to be adjusted on the principle of what is reasonable in itself. That is not determined by what it costs to own and maintain a car (Tr. 105). A short line might ahve the car for 5 days and the larger road have [fol. 1052] it only 3 days because the short line has the terminal free time. That terminal free time is taken care of in the rates so far as the line haul is concerned, and the division should cover the expense if the division was sufficient. I can imagine that in this case the divisions were fixed by the Traffic Department without taking per diem into consideration because that has been the attitude of traffic departments. When the mileage basis was used in paying for the use of cars, the expense to the short line of car hire was very small. When the change was made to the per diem, you went just as far the other way as you had the first (Tr. 106). I do not know that there is any difference between a switching charge and a division, nor that a switching charge represents operating expense, while a rate or division covers all items of expense that a carrier incurs. A switching charge is supposed to be compensatory to the switching line, especially if it has no line haul business, and the charge should be sufficient to include all items included in the line haul charge. It is recognized that because a switching charge is usually low for the service rendered, it is not unfair to let the line haul carrier refund to the switching carrier the per diem it has had to pay (Tr. 107). Switching charges were not originally based on the allowance of the operating expenses of switching. Nobody would build a switching line unless he hoped to get a return on it. I don't think that the theory under which switching allowances are made to industrial carriers was that the

trunk line was relieved of the operating expense of spotting cars, and I do not think that theory was carried over into the allowance to the industrial carriers (Tr. 108). I do not think the Birmingham Southern Rule should be applied to plant facilities. Per diem does not apply to such roads which are on a straight demurrage basis. I am talking only about railroads which are common carriers (Tr. 109). If a road is classed as a common carrier, its charge is assumed [fol. 1053] to include a profit. I do not think that in principle any line should be drawn between carriers to which the Birmingham Southern Rule would apply and carriers to which it would not apply. It would not be practical, however, to apply it to the longer carriers which are subscribers to the per diem rules. It is not to their interest to dispense with the rules as they would rather have one offset the other. The Valley & Siletz is 39 miles long and is a lumber railroad, extending into the timber (Tr. 110). Some timber lines go 80 miles into the timber, but the Birmingham Southern Rule would be no benefit to a road with that long a haul. The point comes when the length of haul means so many days delays that under the Birmingham Southern Rule with the demurrage rate it would cost more than straight per diem. It might be possible to make modifications allowing, say 10 days free time, but I have never considered that practical. We are not wedded to the Birmingham Southern Rule as it stands now, but think that a good rule could be worked out by granting a short line so much free time with per diem thereafter as was done by the Railroad Administration (Tr. 111). I refer to the statement that the Birmingham Southern Rule might cause delay to equipment. I don't think that the allowance of 3 days' free time under the Birmingham Southern Rule would result in delay to cars by a road which can handle the cars in less time. A shipper is entitled to 48 hours' free time from the time the car is placed on his siding. If the industry can place the car or removes it in 12 hours, it might make an average detention of only 2½ days (Tr. 112). There might be some margin, but the margin would be so remote that I do not think it would cut any figure. The allowance of 3 days would not make a road last because it has to allow 48 hours to the shipper which only allows the road one day for the placement and removal. If the shipper does not use the

48 hours, there is an incentive to build up credits to apply [fol. 1054] against debits when a car is held longer than 3 days (Tr. 113). I think the proper allowance should be applied to each carrier in each instance, which is why I have said that one uniform rule is not necessary. If a road needs only 2 days, that is all it ought to have. Under the Birmingham Southern Rules a carrier might collect demurrage from some shippers and not pay any demurrage to the connecting line (Tr. 114). It might be possible for a road, by reason of prompt handling by some shippers and the offsetting of debits with credits, to collect demurrage and yet pay no demurrage to the connecting line. That should be taken into consideration in measuring the free time to be allowed. If roads in applying the rule were required to keep separate records of the cars which are delivered to the industrial road for shippers under the average agreement and those delivered to shippers worked on straight demurrage, it would complicate the records to that extent, but it could be done. It is desirable to have a rule that could be applied as simply as possible. The records have to be kept with respect to each shipper now (Tr. 115). In this case, the exhibits show that the complainant had average detention of 2.1 days per revenue load, but I would say that the free time allowance on general principle should not exceed the time necessary for the placement and removal of the cars (Tr. 116). I conceive of cases where an allowance of 48 hours free with the average agreement would make him whole by the offsetting of debits with credits. This is particularly true of lumber railroads where the traffic is handled for the proprietary company. It appeals to me as reasonable that an industrial road should pay per diem while it is hauling a load between its delivery point with the trunk line and its point of placement with the shipper. I think it would be fair if they were given enough free time to offset the free time they have to allow shippers, with the per diem rate applying thereafter (Tr. 117). [fol. 1055] The Birmingham Southern basis provides for the demurrage rate after the free time, which is twice the per diem rate. If under the suggested plan the per diem rate was applied, I think it would work out about right. To elaborate, I think that if a short line paid per diem for all of the time except the 2 days allowed to the shipper, and

paid at the per diem rate, it would be as favorable to them as if they applied the Birmingham Southern basis with 3 days allowance, with the higher $2 a day rate thereafter (Tr. 118). I am familiar to some extent with divisions and know that in the past they have been a more or less matter of bargain between trunk lines and short lines (Tr. 119). Short lines and trunk lines still continue to make their divisions by negotiation. The larger roads have very generally dictated what the divisions should be and the short lines have had to accept what they were willing to accord. The short lines try to get enough to take care of investment, car hire and other items, but do not usually succeed (Tr. 120). In most cases short lines get what the trunk lines will allow them. I do not think the Commission will have any difficulty in determining where to stop, so far as distance is concerned, in applying the Birmingham Southern Rule. I don't think it is necessary in this case to decide what the Commission should do with a railroad 100 miles long. I do not mean to leave the matter of allowances entirely to the discretion of trunk lines. I think though there should be room for discussion (Tr. 121). My Exhibit 14 is a copy of a letter that has been sent to the Commission.

Mr. Meyer: We would like to have the records checked for 1923 and 1924, and determine the average detention on the South Manchester. We will have a joint check made by our man and a representative of the South Manchester and submit it in place of Exhibit 9.

Examiner Wagner: Is there any objection to that? (Tr. 122).

[fol. 1056] Mr. Quirk: We have no objection to that.

Examiner Wagner: That may be put into the mail in 15 days.

Whereupon the hearing in the above entitled matter was closed.

[fol. 1057] Petitioners, through their counsel, then offered in evidence the following:

Mr. Towner: I have one witness by whom I propose to introduce certain evidence relating to the allegations of confiscation contained in the petition. I may say that this evi-

dence shows, with respect to each plaintiff railroad, on the basis of cars interchanged between them and certain other railroads during the year 1929, the exact effect produced by the order of the Commission and upon which we claim that there is an unconstitutional taking of property.

C. B. WRIGHT called as a witness on behalf of petitioner, having been first duly sworn, testified as follows:

Direct examination:

The Witness: I live in Chicago (Tr. D. C. 41) and am Chairman of the General Committee, Transportation Division, of the American Railway Association. As such I have jurisdiction over car hire arrangements between members of the American Railway Association and between those members and other railroads including the plaintiffs in this case. I have had compiled data showing, with respect to each plaintiff railroad, the facts with respect to cars interchanged in 1929 between each plaintiff and certain other railroads with which each plaintiff connects. The documents handed to me are the statements to which I refer.

Mr. Towner: There are 12 of these statements, and I will offer them as Exhibits 29 to 40, inclusive, and ask to have them marked (Tr. D. C. 42).

Mr. Underwood: We object to the introduction of those statements in evidence on the ground that there is not a sufficient basis for the introduction of this evidence under the pleadings of the case. That is to say, the only allegation is a broad allegation of confiscation. We also object [fol. 1058] to it on the ground that the facts and figures should have been presented to the Interstate Commerce Commission so that they could have had the opportunity to pass upon the question in the light of those facts, and that it is not now open to petitioner to present it here as new evidence that should be presented to the Commission (Tr. D. C. 43).

Judge Evans: They will be received subject to the objection.

Mr. Underwood: I take it, your Honor will grant me an exception.

Judge Evans. Yes. (Tr. D. C. 44.)

(Whereupon said documents so offered were received in evidence and were marked Petitioners' Exhibits 29 to 40,

both inclusive. Exhibit 40 is reproduced at the conclusion of this narrative of evidence.) (Tr. D. C. 45.)

Judge Carpenter: I suggest that all of these questions go in subject to the same objection and the same ruling of the court (Tr. D. C. 46).

The Witness: Referring to Exhibit 40, the figures in Column 7, particularly those under the heading "A", refer to the number of days that the cars under the heading "A" in Column 6 were held on the lines of the railroads shown on page 2 of the same exhibit. In the case of the interstate railroad there is no detention included on cars belonging to that railroad.

Cross-examination (Tr. D. C. 47):

The Witness: On page 1 of Exhibit 40, Column 7, represents the per diem days and the amount collected from each carrier for the cars under the per diem rules. In the first column, for instance, it appears that the Alabama & Northwestern paid out during the period in question $7,624, representing per diem accruals on that railroad in 1929. The amount was paid to the Southern. The Southern may have some arrangement whereby they waive per diem or grant free time to some of these railroads, but there is no free [fol. 1059] time with respect to the railroads named on page 1 of the Southern Railway statement (Tr. D. C. 48). No reclaim is allowed to any of these roads on the traffic here represented. Page 4 shows the reclaim allowed. This page represents reclaims on certain classes of traffic known as terminal switching service, wherein the road named in Column 1 acted as a switching road for the Southern and the Southern may have acted as a switching road for the railroad named in Column 1. The exhibit shows whether these roads were subscribers or not. I don't know that on some of them the Southern paid out more in reclaims than it exacted in per diem (Tr. D. C. 49). These figures represent the business for the calendar year 1929. The business has not been so good this year, but these figures are illustrative. They are not speculative. I say that they illustrate what would happen under the Commission's order if the same number of cars were handled by the connections in 1931, or proportionately (Tr. D. C. 50). I am personally familiar with the figures on these exhibits and had them

prepared. The railroads made the reports to my office and we compiled the statements. The figures were furnished by the individual railroads. Each exhibit is in the same form and was prepared by the same method (Tr. D. C. 51). In Column 5 of Exhibit 40, the figures which follow 1, 6 and 3 represent the number of railroad connections that each one of the short lines shown on the left hand margin has. The Evansville & Ohio Valley, for example, has 6 railroad connections. I am not so sure that it would not be allowed to make a 2 day deduction in per diem before payment. The order requires these roads to do certain things (Tr. D. C. 52). Column 7, Block 7, Column A of each exhibit, shows the amount of per diem actually paid by these railroads. Those are the figures that were reported to me as being a fact (Tr. D. C. 53). On the exhibit covering the Pennsylvania Railroad, I cannot tell how much would be lost to the Pennsylvania in per diem by reason of the order [fol. 1060] of the Commission, but it could be computed. On page 1, for example, Block 7, Paragraph A, shows 281,917 which multiplied by 2 would give the average of 2 days per loaded car (Tr. D. C. 54). That should have been Column 6, Block 6, Column A. The 87,179 is the total number of loaded cars interchanged and we multiply by 2 to get the average of loaded cars which would be about 162,000. We would go to the other pages to get the rest of the money. It may be that the Pennsylvania is paying out in switching reclaims to subscribers for this same kind of service about 3 times as much as they receive in reclaims, so that they have a loss on reclaim of about $2,000,000 a year (Tr. D. C. 55), but that has nothing to do, of course, with pages 1, 2 and 3 of the exhibit. It is perhaps a matter of argument as to the similarity of service between the free time allowance imposed by the Commission's order and the reclaim on switching traffic. We take the position that there is a vast difference between terminal switching service and road haul service. I cannot assume that the two services are the same (Tr. D. C. 56). According to the record I understand the Pennsylvania would have a deficit under those circumstances. They shoulder that now without any intervention by the Commission with respect to terminal switching reclaim.

Redirect examination (Tr. D. C. 57):

The Witness: With respect to Exhibit 40, the Southern Railway Company does not allow switching reclaim to the nonsubscribers there listed. These exhibits are not calculated to show the total loss to the plaintiff railroads, but are only compiled as being illustrative and representative of the situation, which they are.

Recross-examination (Tr. D. C. 58):

The Witness: There is a reclaim paid as between subscriber roads on cars handled in terminal switching, but [fol. 1061] for the same service the nonsubscriber does not receive the reclaim. We have 12 railroads here plaintiffs that are certainly illustrative of railroads in the country, and the exhibits show what happened to them with respect to their connections (Tr. D. C. 59). We have the same information with respect to all the other railroads in the country, but we have not prepared the statements in the form of these exhibits. My statement was that the exhibits are typical of the roads there shown.

Mr. Towner: That is all.

Judge Evans: Is there any evidence to be offered by the defense.

Mr. Underwood: No, your Honor (Tr. D. C. 60).

Whereupon both petitioners and defendants rested their case.

[fol. 1062] Ex. 11 Before I. C. C. in Docket No. 17801

American Railway Association

List of Subscribers to the Car Service and Per Diem Agreement—March 1, 1927
(Roads whose names are indented are subsidiary to the parent or operating road whose name immediately precedes them.)

Name of road	Average miles operated	Revenue freight cars owned
Aberdeen & Rockfish R. R. Co	44.90	
Abilene & Southern Ry. Co	96.79	35
Akron & Barberton Belt R. R. Co	46.17	
Akron, Canton & Youngstown Ry. Co	171.34	210
Northern Ohio Ry. Co		
Alabama & Vicksburg Ry. Co	141.49	979
Alabama, Tennessee & Northern R. R. Corporation	186.53	415
Albany & Northern Ry. Co		
Algoma Central & Hudson Bay Ry. Co	332.00	1,048

Name of road	Average miles operated	Revenue freight cars owned
Algoma Eastern Ry	87.00	293
Alton & Eastern R. R. Co	56.00	.....
Alton & Southern R. R	43.18	.....
Ann Arbor R. R. Co	293.86	2,348
Menominee & Saint Paul R. R. Co	.....	.....
Apalachicola Northern R. R. Co	99.12	141
Arcade & Attica R. R. Corporation	28.36	14
Arkansas & Louisiana Missouri Ry. Co	85.14	.....
Arkansas Central	.....	.....
Arkansas Valley Interurban Ry. Co	60.00	7
Ashley, Drew & Northern Ry. Co	40.65	32
Atchison, Topeka & Santa Fe Ry. Co	9,069.61	81,393
Barton County & Santa Fe Ry. Co	.....	.....
Buffalo Northwestern R. R. Co	.....	.....
California, Arizona & Santa Fe Ry. Co	.....	.....
Laton & Western R. R. Co	.....	.....
California Southern R. R. Co	.....	.....
Dodge City & Cimarron Valley Ry. Co	.....	.....
Eldorado & Santa Fe Ry. Co	.....	.....

[fol. 1062–1]

Garden City, Gulf & Northern R. R. Co	.....	.....
Grand Canyon Ry. Co	.....	.....
Kansas Southwestern Ry. Co	.....	.....
Minkler Southern Ry. Co	.....	.....
Oil Fields & Santa Fe Ry. Co	.....	.....
Oklahoma Central R. R. Co	.....	.....
Osage County & Santa Fe Ry. Co	.....	.....
Rio Grande, El Paso & Santa Fe R. R. Co	.....	.....
Rocky Mountain & Santa Fe Ry. Co	.....	.....
Saline & Santa Fe Ry. Co	.....	.....
Santa Fe & Los Angeles Harbor Ry. Co	.....	.....
Tulsa & Santa Fe Ry. Co	.....	.....
Verde Valley Ry. Co	.....	.....
Western Arizona Ry. Co	.....	.....
Sunset Ry. Co	.....	.....
Atlanta & Saint Andrews Bay Ry. Co	62.89	.....
Atlanta & West Point R. R. Co	82.00	23
Atlanta, Birmingham & Coast R. R. Co	93.19	1,613
Atlantic & Western R. R. Co	639.88	1,996
Atlantic Coast Line R. R. Co	24.00	3
Central R. R. Co. of South Carolina	4,862.39	34,464
South Carolina Pacific Ry. Co	.....	.....
Tampa Southern R. R. Co	.....	.....
Belt Line Ry. Co	.....	.....
Atlantic Port Ry. Corp	2.64	.....
Baltimore & Ohio R. R. Co	20.57	203
Baltimore & New York Ry. Co	5,292.89	101,228
Baltimore & Ohio & Chicago R. R. Co	.....	.....
Baltimore & Ohio Connecting R. R. Co	.....	.....
Baltimore & Ohio R. R. Co. in Pennsylvania	.....	.....
Baltimore & Ohio Southwestern R. R. Co	.....	.....
Baltimore & Philadelphia R. R. Co	.....	.....
Baltimore Belt R. R. Co	.....	.....
Belington & Northern R. R. Co	.....	.....
Coal & Coke Ry. Co	.....	.....
Confluence & Oakland R. R. Co	.....	.....
Dayton & Michigan R. R. Co	.....	.....

Name of road	Average miles operated	Revenue freight cars owned
Baltimore & Ohio R. R. Co. (continued)—		
Fairmont, Morgantown & Pittsburgh R. R. Co.	.....	.....
Gaffney & James City R. R. Co.	.....	.....
Georgetown Barge, Dock, Elevator & Ry. Co.	.....	.....
Home Avenue R. R. Co.	.....	.....
Indian Creek & Northern Ry. Co.	.....	.....
Lancaster, Cecil & Southern R. R. Co.	.....	.....
Little Kanawha R. R. Co.	.....	.....
Metropolitan Southern R. R. Co.	.....	.....
[fol. 1062–2]		
Morgantown & Kingwood R. R. Co.	.....	.....
Ohio & Little Kanawha R. R. Co.	.....	.....
Pittsburg & Western R. R. Co.	.....	.....
Pittsburgh Junction R. R. Co.	.....	.....
Quemahoning Branch R. R. Co.	.....	.....
Saint Clairsville & Northern Ry.	.....	.....
Schuylkill River East Side R. R. Co.	.....	.....
Sunday Creek R. R. Co.	.....	.....
Toledo & Cincinnati R. R. Co.	.....	.....
Bowling Green R. R. Co.	.....	.....
Cincinnati & Dayton Ry. Co.	.....	.....
Columbus, Findlay & Northern R. R. Co.	.....	.....
Lima Belt Ry. Co.	.....	.....
Piqua & Troy Branch R. R. Co.	.....	.....
Tylerdale Connecting R. R. Co.	.....	.....
Valley R. R. Co. of Virginia	.....	.....
Washington & Western Maryland R. R. Co.	.....	.....
Washington County R. R. Co.	.....	.....
Wheeling, Pittsburgh & Baltimore R. R. Co.	.....	.....
Winchester & Potomac R. R. Co.	.....	.....
Winchester & Strasburg R. R. Co.	.....	.....
Indian Creek Valley Ry. Co.	23.00	.....
Hamilton Belt Ry. Co.	6.33	.....
Baltimore & Ohio Chicago Terminal R. R.	281.00	599
Bamberger Electric R. R. Co.	75.00	75
Bangor & Aroostook R. R. Co.	616.20	4,277
Van Buren Bridge Co.	.61	.....
Bangor Ry. & Electric Co.	67.69	.....
Batesville Southwestern R. R. Co.	17.00	3
Beaver Dam R. R. Co. (of Virginia)	1.42	37
Belfast & Moosehead Lake R. R. Co.	33.07	.....
Bellefonte Central R. R. Co.	19.80	23
Belt Ry. Co. of Chicago	348.03	366
Bennettsville & Cheraw R. R. Co.	34.00	5
Bessemer & Lake Erie R. R. Co.	228.03	14,991
Pittsburgh, Bessemer & Lake Erie R. R. Co.	.....	.....
Meadville, Conneaut Lake & Linesville R. R. Co.	.....	.....
Big Fork & International Falls Ry. Co.	.....	.....
[fol. 1062–3]		
Bingham & Garfield Ry. Co.	32.29	216
Birmingham & Northwestern Ry. Co.	48.50	19
Birmingham & Southeastern Ry. Co.	46.89	.....
Birmingham Belt R. R. Co.	34.25	.....
Bonhomie & Hattiesburg Southern R. R. Co.	25.95	.....

Name of road	Average miles operated	Revenue freight cars owned
Boston & Albany R. R. Co.	(See N. Y. C.)	
Chester & Becket R. R. Co.		7,875
North Brookfield R. R. Co.		
Pittsfield & North Adams R. R. Corporation		
Providence-Webster & Springfield R. R. Co.		
Ware River R. R. Co.		
Boston & Maine R. R.	2,241.60	17,392
Concord & Portsmouth R. R.		
Connecticut & Passumpsic Rivers R. R. Co.		
Franklin & Tilton R. R.		
Nashua & Acton R. R.		
Nashua & Lowell R. R. Corporation		
New Boston R. R. Co.		
Northern R. R.		
Concord & Claremont New Hampshire R. R. Co.		
Peterborough & Hillsborough R. R. Co.		
Pemigewasset Valley R. R.		
Peterborough R. R.		
Stony Brook R. R. Corporation		
Troy & Bennington R. R. Co.		
Vermont & Massachusetts R. R. Co.		
Wilton R. R. Co.		
Mount Washington Ry. Co.	3.17	
Saint Johnsbury & Lake Champlain R. R. Co.	96.20	
Vermont Valley R. R.	24.69	
Sullivan County R. R.	26.04	
York Harbor & Beach R. R. Co.	11.53	
Boyne City, Gaylord & Alpena R. R. Co.	91.52	211
British Columbia Electric Ry. Co. Ltd.	158.70	396
Buffalo & Susquehanna R. R. Corporation	253.54	3,090
Addison & Susquehanna R. R. Co.		
Wellsville, Coudersport & Pine Creek R. R. Co.		
Buffalo Creek R. R.		
Buffalo Creek R. R. Co.	37.96	
Buffalo Creek & Gauley R. R. Co.		
Buffalo, Rochester & Pittsburgh Ry. Co.	18.60	918
Allegheny & Western Ry. Co.	591.55	15,002
Allegheny Terminal Co.		
Clearfield & Mahoning Ry. Co.		
Mahoning Valley R. R. Co.		
Bullfrog Goldfield R. R. Co.		
Butler County R. R. Co.	78.95	
Butte, Anaconda & Pacific Ry.	49.52	144
California Western R. R. & Navigation Co.	72.00	1,429
Cambria & Indiana R. R. Co.	42.85	176
Canadian National Ry. Co.	37.65	3,475
Atlantic & Saint Lawrence R. R. Co.	20,625.00	110,133
Bay of Quinte Ry. Co.		
Canadian Government Ry.		
Canadian National Ry. Co.		
Canadian Northern Ry. Co.		
Canadian Northern Ontario Ry.		
Canadian Northern Quebec Ry.		
Central Ontario Ry.		
Champlain & Saint Lawrence R. R. Co.		
Grand Trunk Ry. Co. of Canada		

Name of road	Average miles operated	Revenue freight cars owned
Canadian National Ry. Co. (continued)—		
Grand Trunk Pacific Ry. Co.		
Halifax & Southwestern Ry.		
Intercolonial Ry.		
International Bridge Co.		
Lewiston & Auburn R. R. Co.		
Minnesota & Manitoba R. R. Co.		
Norway Branch R. R. Co.		
Quebec & Lake St. John Ry. Co.		
Saint Clair Tunnel Co.		
United States & Canada R. R. Co.		
Vermont & Province Line R. R. Co.		
Canadian Pacific Ry. Co.	14,279.40	90,387
Atlantic & Northwest Ry.		
Alberta Central Ry. Co.		
Alberta Railway & Navigation Co.		
British Columbia Central Ry.		
Berlin, Waterloo, Wellsley & Lake Huron Ry.		
Calgary & Edmonton Ry.		
Campbellford, Lake Ontario & Western Ry.		
Canadian Pacific Lines in Maine		
Aroostook River R. R. Co.		
Houlton Branch R. R. Co.		
International Ry. Co. of Maine		
Newport & Richford R. R. Co.		
fol. 1062–5]		
Cap de la Madeleine Ry.		
Columbia & Kootenay Ry.		
Columbia & Western Ry.		
Georgian Bay & Seaboard Ry.		
Great North West Central Ry.		
Guelph & Goderich Ry.		
Kingston & Pembroke Ry. Co.		
Kootenay & Arrowhead Ry.		
Kootenay Central Ry.		
Lindsay, Bobcaygeon & Pontypool Ry.		
Manitoba & North Western Ry.		
Manitoba South West Colonisation Ry.		
Montreal & Atlantic Ry. Co.		
Montreal & Ottawa Ry.		
Nakusp & Slocan Ry.		
New Brunswick Southern Ry.		
Nicola, Kamloops & Similkameen Ry.		
Northern Colonisation Ry.		
Ontario & Quebec Ry.		
Ottawa & Northern & Western Ry.		
Oxford Mountain Ry.		
St. Maurice & Ottawa Ry.		
St. Marys & Western Ontario Ry. Co.		
St. Valley Ry.		
Saskatchewan & Western Ry.		
Shuswap & Okanagan Ry.		
South Ontario Pacific Ry. Co.		
Tillsonburg, Lake Erie & Pacific Ry.		
Vancouver & Lulu Island Ry.		
Walkerton & Lucknow Ry.		
Canton R. R. Co.	32.78	21
Carolina & Northwestern Ry. Co.	133.50	
Cedar Rapids & Iowa City Ry.	44.00	10
Central California Traction Co.	53.00	35
Central Indiana Ry. Co.	127.12	38

Name of road	Average miles operated	Revenue freight cars owned
Central New England Ry. Co.	294.71	1,013
Hartford & Connecticut Western R. R. Co.	.....	.....
Central of Georgia Ry. Co.	1,920.64	10,309
August & Savannah R. R.	.....	.....
Chattahoochee & Gulf R. R. Co.	.....	.....
Southwestern R. R. Co.	.....	.....
[fol. 1062–6]		
Central R. R. Co. of New Jersey	692.19	25,899
Beaver Meadow, Treskow & New Boston R. R. Co.	.....	.....
Dover & Rockaway R. R. Co.	.....	.....
Easton & Western R. R. Co.	.....	.....
Hibernia Mine R. R. Co.	.....	.....
Lehigh & Susquehanna R. R.	.....	.....
Nesquehoning Valley R. R. Co.	.....	.....
Treskow R. R. Co.	.....	.....
Ogden Mine R. R. Co	.....	.....
Wilkes-Barre & Scranton Ry. Co.	.....	.....
New York & Long Branch R. R. Co.	39.44	.....
Central Vermont Ry. Co.	408.85	2,420
Bethel Granite Ry. Co.	.....	.....
New London Northern R. R. Co.	.....	.....
West River R. R. Co.	.....	.....
Central West Virginia & Southern R. R. Co.	31.00	15
Charleston & Western Carolina Ry. Co.	342.50	1,098
Charles City Western Ry.	26.00	1
Charlotte Harbor & Northern Ry. Co.	107.59	319
Chattahoochee Valley Ry. Co.	43.63	2
Chesapeake & Ohio Ry. Co.	2,555.73	54,867
Arminius Chemical Co.'s R. R.	.....	.....
Chesapeake & Ohio Ry. Co. of Indiana.	.....	.....
Hammond Belt Ry. Co.	.....	.....
Island Creek R. R. Co.	.....	.....
Keeneys Creek R. R.	.....	.....
Sulphur Mining & R. R. Co.	.....	.....
Long Fork Ry. Co.	.....	.....
Millers Creek R. R. Co.	31.99	.....
Ashland Coal & Iron Ry. Co.	4.33	.....
Chesapeake Beach Ry. Co.	39.63	.....
Chesapeake Western Ry.	28.32	.....
Chesapeake & Western R. R. Co.	40.57	.....
Chicago & Alton R. R. Co.	.....	.....
Joliet & Chicago R. R. Co.	1,050.86	13,690
Kansas City, Saint Louis & Chicago R. R. Co.	.....	.....
Louisiana & Missouri River R. R. Co.	.....	.....
Rutland, Toluca & Northern R. R. Co.	.....	.....
Chicago & Eastern Illinois Ry. Co.	.....	.....
Chicago & Illinois Midland Ry. Co.	945.13	17,149
[fol. 1062–7]	39.85	1,245
Chicago & Illinois Western R. R.	25.24	38
Chicago & North Western Ry. Co.	8,462.83	69,312
Escanaba, Iron Mountain & Western R. R. Co.	.....	.....
Oshkosh Transportation Co.	.....	.....
Chicago, Saint Paul, Minneapolis & Omaha Ry. Co.	1,749.19	11,965
Sioux City Bridge Co.	5.46	.....
Chicago & Western Indiana R. R. Co.	167.96	641
Chicago, Attica & Southern R. R. Co.	155.00	20
Chicago, Aurora & Elgin R. R. Co.	66.00	37

Name of road	Average miles operated	Revenue freight cars owned
Chicago, Burlington & Quincy R. R. Co.	9,407.23	66,499
Black Hills & Fort Pierce R. R. Co.	.....	.....
Burlington, South Chicago, Terminal R. R. Co.	.....	.....
Deadwood Central R. R. Co.	.....	.....
North Platte Valley Ry. Co.	.....	.....
Chicago Great Western R. R. Co.	1,496.06	8,818
Des Moines Terminal Co	.....	.....
Mason City & Fort Dodge R. R. Co.	.....	.....
Leavenworth Terminal Ry. & Bridge Co.	2.70	.....
Chicago, Harvard & Geneva Lake Ry. Co.	13.00	33
Chicago Heights Terminal Transfer R. R.	22.07	.....
Chicago, Indianapolis & Louisville Ry. Co.	652.63	6,834
Chicago, Milwaukee & Saint Paul Ry. Co.	10,986.92	65,284
Chicago, Terre Haute & Southeastern Ry. Co.	.....	6,133
Chicago, Milwaukee & Gary Ry. Co.	121.20	6
White Sulphur Springs & Yellowstone Park Ry. Co.	22.95	.....
Chicago, Kalamazoo & Saginaw Ry. Co.	45.91	22
Chicago, North Shore & Milwaukee R. R. Co.	108.00	182
Chicago, South Shore & South Bend R. R.	77.00	29
Chicago River & Indiana R. R. Co.	231.32	1,713
Chicago Junction Ry. Co.	.....	32
Union Stock Yard & Transit Co. of Chicago	.....	.....
Chicago, Rock Island & Pacific Ry. Co.	7,611.46	45,917
Choctaw, Oklahoma & Gulf R. R. Co.	.....	.....
White & Black River Valley Ry. Co.	.....	.....
Morris Terminal Ry. Co.	.....	.....
Peoria & Bureau Valley R. R. Co.	.....	.....
Rock Island & Dardanelle Ry. Co.	.....	.....
[fol. 1062–8]		
Rock Island, Arkansas & Louisiana R. R. Co.	.....	.....
Rock Island, Stuttgart & Southern Ry. Co.	.....	.....
Saint Paul & Kansas City Short Line R. R. Co.	.....	.....
Chicago, Rock Island & Gulf Ry. Co.	461.23	1,732
Rock Island Memphis Terminal Ry. Co.	.....	.....
Chicago, West Pullman & Southern R. R. Co.	35.89	36
Chihuahua & Eastern Ry. Co.	76.00	.....
Cincinnati, Georgetown & Portsmouth R. R. Co.	53.70	.....
Cincinnati, Indianapolis & Western R. R. Co.	321.62	2,537
Cleveland, Cincinnati, Chicago & Saint Louis Ry. Co.	2,398.01	38,791
Central R. R. Co. of Indianapolis	.....	.....
Cincinnati, Lafayette & Chicago R. R. Co.	.....	.....
Cincinnati, Sandusky & Cleveland R. R. Co.	.....	.....
Columbus, Hope & Greensburg R. R. Co.	.....	.....
Evansville, Mount Carmel & Northern Ry. Co.	.....	.....
Findlay Belt Ry. Co.	.....	.....
Mount Gilead Short Line Ry. Co.	.....	.....
Peoria & Eastern Ry. Co.	.....	931

Name of road	Average miles operated	Revenue freight cars owned
Cleveland, Cincinnati, Chicago & Saint Louis Ry. Co. (continued)—		
South Dayton Ry. Co.	.....	.....
Vernon, Greensburg & Rushville R. R. Co.	.....	.....
Cincinnati Northern R. R. Co.	244.23	2,529
Evansville, Indianapolis & Terre Haute Ry. Co.	146.26	598
Kankakee & Seneca R. R. Co.	42.19	.....
Muncie Belt Ry. Co.	4.84	.....
Clinchfield R. R. Co.	.....	.....
Carolina, Clinchfield & Ohio Ry.	291.20	7,667
Clinchfield Northern Ry. of Kentucky	.....	.....
Carolina, Clinchfield & Ohio Ry. of South Carolina	18.09	.....
Clinton & Oklahoma Western R. R. Co.	60.25	33
Clinton, Davenport & Muscatine Ry. Co.	66.00	17
Colfax Northern Ry. Co.	5.93	.....
Colfax Consolidated Coal Co.'s R. R.	.....	.....
Thomas W. Griggs' R. R.	.....	.....
Colorado & Southern Ry. Co.	1,091.63	6,705
Colorado R. R. Co.	.....	.....
Columbia, Newberry & Laurens R. R. Co.	75.00	56
Columbus & Greenville Ry. Co.	167.70	113
Conemaugh & Black Lick R. R. Co.	42.00	15
[fol. 1062-9]		
Copper Range R. R. Co.	113.62	614
Mohawk & Traverse Bay R. R.	.....	.....
Cornwall R. R. Co.	12.67	141
Coudersport & Port Allegany R. R. Co.	39.00	71
Cumberland & Manchester R. R. Co.	25.59	51
Cumberland & Pennsylvania R. R. Co.	56.83	1,530
Cumberland Co.'s R. R.	.....	.....
Cuyahoga Valley Ry. Co.	8.79	.....
Dardanelle & Russellville R. R. Co.	5.00	10
Davenport, Rock Island & North Western Ry. Co.	49.00	40
Dayton-Goose Creek Ry. Co.	25.39	(See So. Pac Tex-La)
Dayton & Union R. R. Co.	46.99	.....
Deering Southwestern Ry.	32.90	88
Delaware & Hudson Co.	894.62	16,133
Albany & Susquehanna R. R. Co.	.....	.....
Chateaugay & Lake Placid Ry. Co.	.....	.....
Plattsburg & Dannemora R. R.	.....	.....
Northern Coal & Iron Co.'s R. R.	.....	.....
Rensselaer & Saratoga R. R. Co.	.....	.....
Albany & Vermont R. R. Co.	.....	.....
Rutland & Whitehall R. R. Co.	.....	.....
Saratoga & Schenectady R. R. Co.	.....	.....
Ticonderoga R. R. Co.	.....	.....
Greenwich & Johnsonville Ry. Co.	21.46	.....
Delaware & Northern R. R. Co.	45.75	47
Delaware, Lackawanna & Western R. R. Co.	982.89	27,381
Cayuga & Susquehanna R. R. Co.	.....	.....
Erie & Central New York R. R. Co.	.....	.....
Greene R. R. Co.	.....	.....
Hoboken Ferry Co.	.....	.....
Hopatcong R. R. Co.	.....	.....
Lackawanna R. R. Co. of New Jersey	.....	.....
Morris & Essex R. R. Co.	.....	.....
Chester R. R. Co.	.....	.....
Morris & Essex Extension R. R. Co.	.....	.....
Newark & Bloomfield R. R. Co.	.....	.....

[fol. 1062-10]

Name of road	Average miles operated	Revenue freight cars owned
Delaware, Lackawanna & Western R. R. Co. (continued)—		
New York, Lackawanna & Western Ry. Co.	.....	.....
Oswego & Syracuse R. R. Co.	.....	.....
Passaic & Delaware R. R. Co.	.....	.....
Passaic & Delaware Extension R. R. Co.	.....	.....
Sussex R. R. Co.	.....	.....
Syracuse & Baldwinsville Ry. Co.	.....	.....
Syracuse, Binghamton & New York R. R. Co.	.....	.....
Utica, Chenango & Susquehanna Valley Ry. Co.	.....	.....
Valley R. R. Co. (of New York)	.....	.....
Warren R. R. Co.	.....	.....
Lackawanna & Montrose R. R. Co.	9.93	.....
Harlem Transfer Co.	1.29	.....
Delray Connecting R. R. Co.	27.35	278
Denison, Bonham & New Orleans R. R. Co.	24.15	.....
Denver & Inter-Mountain R. R. Co.	56.68	164
Denver & Rio Grande Western R. R. Co.	2,600.30	15,776
Kenilworth & Helper R. R. Co.	.....	.....
Rio Grande Junction Ry. Co.	.....	.....
Rio Grande & Southwestern R. R. Co.	.....	.....
Denver & Salt Lake R. R. Co.	255.18	1,019
Northwestern Terminal Ry. Co.	5.53	.....
DeQueen & Eastern R. R. Co.	36.10	16
Des Moines & Central Iowa R. R.	75.00	173
Des Moines Union Ry. Co.	32.83	18
Des Moines Western Ry. Co.	5.20	.....
Detroit & Mackinac Ry. Co.	375.42	1,119
Detroit & Toledo Shore Line R. R. Co.	61.75	394
Detroit Terminal R. R. Co.	135.36	.....
Detroit, Toledo & Ironton R. R. Co.	470.30	2,795
Detroit & Ironton R. R. Co.	.....	.....
Ford Transportation Co.	.....	.....
Toledo-Detroit R. R. Co.	.....	.....
Dominion Atlantic Ry. Co.	305.00	188
Doniphan, Kensett & Searcy Ry.	6.00	.....
Duluth & Iron Range R. R. Co.	278.93	6,865

[fol. 1062-11]

Duluth & Northeastern R. R. Co.	61.75	345
Duluth, Missabe & Northern Ry. Co.	305.20	8,886
Interstate Transfer Ry. Co.	.....	.....
Spirit Lake Transfer Ry. Co.	.....	.....
Duluth, South Shore & Atlantic Ry. Co.	591.30	2,945
Mineral Range R. R. Co.	88.97	901
Hancock & Calumet R. R. Co.	.....	.....
Duluth, Winnipeg & Pacific Ry. Co.	178.89	1,996
Duluth, Rainy Lake & Winnipeg Ry. Co.	.....	.....
Durham & Southern Ry. Co.	58.97	6
East Carolina Ry.	39.20	11
East Erie Commercial R. R.	9.14	.....
East Jersey R. R. & Terminal Co.	1.98	669
East Jordan & Southern R. R. Co.	49.55	.....
Eastland, Wichita Falls & Gulf R. R. Co.	27.83	.....
East St. Louis & Suburban Ry. Co.	14.00	324
East St. Louis, Columbia & Waterloo Ry.	22.10	3
East St. Louis Junction R. R. Co.	41.86	290
East Tennessee & Western North Carolina R. R. Co.	36.18	207

Name of road	Average miles operated	Revenue freight cars owned
Eastern British Columbia Ry. Co		
Eastern Kentucky Ry. Co	14.00	29
Eastern New York Utilities Corp	36.08	41
Edmonton, Dunvegan & British Columbia Ry. Co	37.20	7
Alberta & Great Waterways Ry. Co	421.9	162
Central Canada Ry. Co	299.9	142
Lacombe & North Western Ry. Co	84.6	.....
Elberton & Eastern R. R. Co	48.9	.....
Elgin, Joliet & Eastern Ry. Co	35.51	4
Chicago, Lake Shore & Eastern Ry. Co	459.77	11,010
Gary & Western Ry. Co	.....	.....
Joliet & Blue Island Ry. Co	.....	.....
El Paso Southern Ry. Co	.....	.....
[fol. 1062–12]	3.31	.....
Erie R. R. Co	2,055.89	51,027
Arlington R. R. Co	.....	.....
Arnot & Pine Creek R. R. Co	.....	.....
Avon, Geneseo & Mount Morris R. R. Co	.....	.....
Bergen & Dundee R. R. Co	.....	.....
Bergen County R. R. Co	.....	.....
Brockport & Shawmut R. R. Co	.....	.....
Buffalo, Bradford & Pittsburgh R. R. Co	.....	.....
Columbus & Erie R. R. Co	.....	.....
Conesus Lake Ry. Co	.....	.....
Docks Connecting Ry. Co	.....	.....
Elmira State Line R. R. Co	.....	.....
Erie & Black Rock R. R. Co	.....	.....
Erie & Wyoming Valley R. R. Co	.....	.....
Eriton R. R. Co	.....	.....
Goshen & Deckertown Ry. Co	.....	.....
Jefferson R. R. Co	.....	.....
Long Dock Co	.....	.....
Middletown & Crawford R. R. Co	.....	.....
Montgomery & Erie Ry. Co	.....	.....
Moosic Mountain & Carbondale R. R. Co	.....	.....
New York & Greenwood Lake Ry. Co	.....	.....
New York, Lake Erie & Western Coal & R. R. Co	.....	.....
New York, Lake Erie & Western Docks & Improvement Co	.....	.....
Newark & Hudson R. R. Co	.....	.....
Northern R. R. Co. of New Jersey	.....	.....
Nyack & Southern R. R. Co	.....	.....
Nypano R. R. Co	.....	.....
Cleveland & Mahoning Valley Ry. Co	.....	.....
Sharon Ry	.....	.....
Westerman Coal & Iron R. R.	.....	.....
Paterson & Hudson River R. R. Co	.....	.....
Paterson & Ramapo R. R. Co	.....	.....
Union R. R. Co. (of New York)	.....	.....
Paterson, Newark & New York R. R. Co	.....	.....
Penhorn Creek R. R. Co	.....	.....
Rochester & Genesee Valley R. R. Co	.....	.....
Tioga R. R. Co	.....	.....
West Clarion R. R. Co	.....	.....
Youngstown & Austintown R. R. Co	.....	.....
Bath & Hammondsport R. R. Co	9.20	.....

Name of road	Average miles operated	Revenue freight cars owned
Erie R. R. Co. (continued)—		
Chicago & Erie R. R. Co.	269.56	.....
New Jersey & New York R. R. Co.	45.72	.....
New Jersey & New York Extension R. R. Co.	.....	.....
New York, Susquehanna & Western R. R. Co.	135.97	2,555
Erie Terminals R. R. Co.	.....	.....
Hackensack & Lodi R. R. Co.	.....	.....
Lodi Branch R. R. Co.	.....	.....
Macopin R. R. Co.	.....	.....
Passaic & New York R. R. Co.	.....	.....
Wilkes-Barre & Eastern R. R. Co.	87.04	.....
Susquehanna Connecting R. R. Co.	.....	.....
[fol. 1062–13]		
Erie & Michigan Ry. & Navigation Co.	10.92	109
Escanaba & Lake Superior R. R. Co.	75.72	403
Esquimalt & Nanaimo Ry. Co.	209.70	.....
Essex Terminal Ry.	21.00	6
Evansville & Ohio Valley Ry. Co.	91.00	134
Evansville Suburban & Newburgh Ry. Co.	25.00	203
Fairport, Painesville & Eastern R. R. Co.	4.56	152
Fort Dodge, Des Moines & Southern R. R. Co.	152.02	1,959
Fernwood, Columbia & Gulf R. R. Co.	44.41	60
Flint Belt R. R. Co.	11.17	.....
Florida East Coast Ry. Co.	763.01	2,807
Fonda, Johnstown & Gloversville R. R. Co.	88.77	10
Gloversville & Broadalbin R. R. Co.	.....	.....
Johnstown, Gloversville & Kingsboro Horse R. R. Co.	.....	.....
Fort Smith & Western Ry. Co.	249.75	1,061
Fort Smith, Subiaco & Rock Island R. R. Co.	39.82	.....
Fort Worth & Denver City Ry. Co.	456.64	3,940
Acme Tap R. R. Co.	.....	.....
Fort Worth & Denver Terminal Ry. Co.	.....	.....
Fort Worth Belt Ry. Co.	18.06	.....
Frankfort & Cincinnati Ry. Co.	40.80	.....
Franklin & Pittsylvania Ry. Co.	29.95	7
Fredericksburg & Northern Ry. Co.	23.90	.....
Gainesville & Northwestern R. R. Co.	37.13	3
Gainesville Midland Ry.	74.00	22
Galveston, Houston & Henderson R. R. Co.	50.00	.....
Garden City Western Ry. Co.	13.94	30
Garyville Northern R. R. Co.	35.00	.....
[fol. 1062–14]		
Georgia R. R. Lessee Organization	328.90	1,539
Augusta Belt Ry. Co.	.....	.....
Georgia R. R. & Banking Co.	.....	.....
Lexington Terminal R. R. Co.	.....	.....
Milledgeville Ry. Co.	.....	.....
Monroe R. R. Co.	.....	.....
Georgia & Florida R. R.	406.16	690
Georgia, Ashburn, Sylvester & Camilla Ry. Co.	49.98	.....
Georgia, Florida & Alabama Ry. Co.	192.86	475
Georgia Northern Ry. Co.	87.78	58
Georgia Southwestern & Gulf R. R. Co.	36.03	12
Albany Street Ry. Co.	.....	.....
Grafton & Upton R. R. Co.	15.37	6
Grand River Ry. Co.	21.00	.....

Name of road	Average miles operated	Revenue freight cars owned
Grand Trunk Western Ry. Co.	991.69	10,284
Bay City Terminal Ry. Co.	.....	.....
Chicago & Kalamazoo Terminal R. R. Co.	.....	.....
Chicago, Detroit & Canada Grand Trunk Junction R. R. Co.	.....	.....
Cincinnati, Saginaw & Mackinaw R. R. Co.	.....	.....
Detroit & Huron Ry. Co.	.....	.....
Detroit, Grand Haven & Milwaukee Ry. Co.	.....	.....
Grand Rapids Terminal R. R. Co.	.....	.....
Grand Trunk Junction	.....	.....
Grand Trunk Western Ry. Co.	.....	.....
Michigan Air Line Ry.	.....	.....
Pontiac, Oxford & Northern R. R. Co.	.....	.....
Toledo, Saginaw & Muskegon Ry. Co.	.....	.....
Graysonia, Nashville & Ashdown R. R. Co.	.....	.....
Great Northern Ry. Co.	1.50	109
Great Falls & Teton County Ry. Co.	8,25-.44	49,047
Great Northern Terminal Ry. Co.	.....	.....
Minneapolis Belt Line Co.	.....	.....
Minneapolis Western Ry. Co.	.....	.....
Montana Eastern Ry. Co.	.....	.....
Watertown & Sioux Falls Ry. Co.	.....	.....
Farmers Grain & Shipping Co.	.....	.....
Brandon, Devils Lake & Southern Ry. Co.	66.55	.....
Duluth & Superior Bridge Co.	.....	.....
Duluth Terminal Ry. Co.	2.37	.....
Brandon Saskatchewan & Hudson Bay Ry. Co.	6.46	.....
Crow's Nest Southern Ry. Co.	.....	.....
[fol. 1062-15]		
Manitoba & Great Northern Ry. Co.	.....	.....
Nelson & Fort Sheppard Ry.	.....	.....
New Westminister Southern Ry.	.....	.....
Red Mountain Ry.	.....	.....
Vancouver Victoria & Eastern Ry. and Navigation Co.	.....	.....
Great Western Ry. Co.	.....	.....
Green Bay & Western R. R. Co.	86.74	168
Ahnapee & Western Ry. Co.	234.15	1,358
Kewaunee, Green Bay & Western R. R. Co.	32.53	.....
Groveton, Lufkin & Northern Ry. Co.	35.70	.....
Gulf & Ship Island R. R. Co.	78.00	100
Gulf Coast Lines	307.56	975
New Orleans, Texas & Mexico Ry. Co.	.....	5,172
Beaumont, Sour Lake & Western Ry. Co.	191.22	.....
New Iberia & Northern R. R. Co.	118.75	.....
Iberia, Saint Mary & Eastern R. R. Co.	115.56	.....
Orange & Northwestern R. R. Co.	.....	.....
Saint Louis, Brownsville & Mexico Ry. Co.	61.55	.....
Gulf, Colorado & Santa Fe Ry. Co.	550.22	.....
Cane Belt R. R. Co.	1,908.88	518
Concho, San Saba & Llano Valley R. R. Co.	.....	.....
Gulf & Interstate Ry. Co. of Texas	.....	.....

Name of road	Average miles operated	Revenue freight cars owned
Gulf, Colorado & Santa Fe Ry. Co. (continued)—		
Gulf, Beaumont & Great Northern Ry. Co.	.....	.....
Gulf, Beaumont & Kansas City Ry. Co.	.....	.....
Jasper & Eastern Ry. Co.	.....	.....
Beaumont Wharf & Terminal Co.	4.12	.....
Santa Fe Dock & Channel Co.	.....	.....
Gulf, Mobile & Northern R. R. Co.	465.95	1,568
Meridian & Memphis Ry. Co.	.....	.....
Gulf, Texas & Western Ry. Co.	130.60	77
Hagerstown & Frederick Ry.	87.00	56
Hampton & Branchville R. R. Co.	24.00	.....
High Point, Thomasville & Lenton R. R. Co.	34.81	6
Hoboken Manufacturers' R. R. Co. (S. & T.)	11.06	.....
Hoboken R. R. Warehouse & Steamship Connecting Co.	.....	.....
Hocking Valley Ry. Co.	348.57	8,388
Pomeroy Belt Ry. Co.	.....	.....
Wellston & Jackson Belt Ry. Co.	.....	.....
[fol. 1062–16]		
Hoosac Tunnel & Wilmington R. R. Co.	24.00	.....
Houston & Brazos Valley Ry. Co.	43.03	16
Houston Belt & Terminal Ry. Co.	69.43	.....
Huntingdon & Broad Top Mountain R. R. & Coal Co.	74.11	699
Illinois Central R. R. Co.	4,849.74	64,587
Benton Southern R. R. Co.	.....	.....
Bloomington Southern R. R. Co.	.....	.....
Blue Island R. R. Co.	.....	.....
Chicago, Memphis & Gulf R. R. Co.	.....	.....
Chicago, Saint Louis & New Orleans R. R. Co.	.....	.....
Canton, Aberdeen & Nashville R. R. Co.	.....	.....
Dubuque & Sioux City R. R. Co.	.....	.....
Omaha Bridge & Terminal Ry. Co.	.....	.....
Fredonia & Reeds R. R. Co.	.....	.....
Golconda Northern Ry.	.....	.....
Herrin Northern R. R. Co.	.....	.....
Johnston City Southern R. R. Co.	.....	.....
Saint Louis, Belleville & Southern Ry. Co.	.....	.....
South Chicago R. R. Co.	.....	.....
Mississippi Valley Co.	.....	.....
Yazoo & Mississippi Valley R. R. Co.	1,380.08	.....
Baton Rouge, Hammond & Eastern R. R.	.....	.....
Helm & Northwestern R. R. Co.	.....	.....
Louisville, New Orleans & Texas Ry. Co. in Arkansas.	.....	.....
Minter City, Southern & Western R. R. Co.	.....	.....
Sunflower & Eastern Ry. Co.	.....	.....
Dunleith & Dubuque Bridge Co.	2.29	.....
Illinois Traction Inc., Illinois Valley Division	107.00	59
Illinois Traction System, Main Division	452.00	858
Illinois Traction Inc., Main Division	.....	.....
St. Louis Electric Terminal	.....	.....
Illinois Terminal Co.	22.45	47
Indiana, Columbus & Eastern Traction Co.	153.00	.....

Name of road	Average miles operated	Revenue freight cars owned
Indiana Harbor Belt R. R. Co.	555.47	1,002
Indiana Northern Ry. Co.	1.60	.....
Indianapolis Union Ry. Co.	77.80	.....
Belt R. R. & Stock Yards Co.	.....	.....
Inland Empire R. R. Co.	180.00	139
International Bridge & Terminal Co.	.....	.....
[fol. 1062–17]		
International-Great Northern R. R. Co.	1,159.50	5,309
Austin Dam & Suburban Ry. Co.	.....	.....
International Ry. Co.	399	.....
Interstate R. R. Co.	65.65	3,355
Iowa Southern Utilities Co.	32.00	10
Irondale, Bancroft & Ottawa Ry.	.....	.....
Ironton R. R. Co.	35.88	12
Jackson & Eastern Ry. Co.	23.00	.....
Jamestown, Westfield & Northwestern R. R. Co.	33.60	7
Johnstown & Stony Creek R. R. Co.	4.68	1
Jonesboro, Lake City & Eastern R. R. Co.	86.70	(See St. L.-S. F.)
Joplin & Pittsburg Ry. Co.	96.00	60
Kanawha & Michigan Ry. Co.	(See N. Y. C.)	1,338
Kanawha & West Virginia R. R. Co.	.....	.....
Middleport & Northeastern Ry. Co.	.....	.....
Point Pleasant Bridge Co.	.....	.....
Kanawha, Glen Jean & Eastern R. R. Co.	15.37	206
Kansas & Missouri Ry. & Terminal Co.	5	.....
Kansas & Oklahoma Ry. Co.	19.02	.....
Kansas & Sidell R. R. Co.	26.19	.....
Kansas City, Clay County & St. Joseph Ry. Co.	77.61	28
Kansas City, Kaw Valley & Western Ry. Co.	35.00	22
Kansas City, Mexico & Orient R. R. Co.	272.20	1,183
Kansas City, Mexico & Orient Ry. Co. of Texas	.....	.....
Kansas City, Mexico & Orient (Mexican Lines)	349.00	254
Kansas City Public Service Co.	317.86	17
Kansas City Southern Ry. Co.	773.01	4,364
Fort Smith & Van Buren Ry. Co.	.....	.....
Kansas City, Shreveport & Gulf Ry. Co.	.....	.....
Maywood & Sugar Creek Ry. Co.	.....	.....
Poteau Valley R. R. Co.	6.67	.....
[fol. 1062–18]		
Texarkana & Fort Smith Ry. Co.	81.08	66
Kansas City, Shreveport & Gulf Terminal Co.	1.58	.....
Kansas City Terminal Ry. Co.	173.26	.....
Kansas, Oklahoma & Gulf Ry. Co.	314.42	275
Missouri, Oklahoma & Gulf R. R. Co. (Kansas Corp'n.)	.....	.....
Kansas, Oklahoma & Gulf Ry. Co. of Texas	9.10	3
Kentucky & Indiana Terminal R. R. Co.	89.77	.....
Kettle Valley Ry. Co.	404.70	141
Key System Transit Co.	263.00	14
Kishacoquillas Valley R. R. Co.	9.50	.....
Knoxville & Augusta	(See So. Ry.)	.....
Knoxville & Bristol	(See So. Ry.)	.....
Lackawanna & Wyoming Valley R. R. Co.	23.00	33
Lake Erie & Eastern R. R. Co.	76.86	.....

Name of road	Average miles operated	Revenue freight cars owned
Lake Erie & Northern Ry. Co.	51.00	27
Lake Erie, Franklin & Clarion R. R. Co.	36.37	183
Lake Superior & Ishpeming R. R. Co.	161.51	1,777
Lake Terminal R. R. Co.	42.48	1
Lancaster & Chester Ry. Co.	29.00	25
Laramie, North Park & Western R. R. Co.	111.35	27
LaSalle & Bureau County R. R. Co.	11.02	.....
Leavenworth & Topeka R. R. Co.	46.50	1
Lehigh & Hudson River Ry. Co.	96.60	428
Lehigh & New England R. R. Co.	219.45	3,561
Campbell Hall Connecting R. R. Co.	.....	.....
Pochuck R. R. Co.	.....	.....
Lehigh Valley R. R. Co.	1,374.62	31,174
Bay Shore Connecting R. R. Co.	.....	.....
Delaware, Susquehanna & Schuylkill R. R. Co.	.....	.....
Easton & Northern R. R. Co.	.....	.....
Lehigh & New York R. R. Co.	.....	.....
[fol. 1062-19]		
Lehigh Valley Harbor Terminal Ry. Co.	.....	.....
Lehigh Valley Ry. Co.	.....	.....
Hayt's Corners, Ovid & Willard R. R. Co.	.....	.....
Lehigh Valley R. R. Co. of New Jersey	.....	.....
Loyalsock R. R. Co.	.....	.....
Montrose R. R. Co.	.....	.....
Pennsylvania & New York Canal & R. R. Co.	.....	.....
State Line & Sullivan R. R. Co.	.....	.....
Raritan Terminal & Transportation Co.	.....	.....
Schuylkill & Lehigh Valley R. R. Co.	.....	.....
Lexington & Eastern Ry. Co.	(See L. & N.)	.....
Ligonier Valley R. R. Co.	16.00	.....
Lima & Defiance R. R. Co.	42.00	.....
Lima Toledo R. R. Co.	72.00	20
Litchfield & Madison Ry. Co.	43.97	1,151
Little River R. R. Co.	8.00	30
Live Oak, Perry & Gulf R. R. Co.	89.19	81
London & Port Stanley Ry.	35.00	14
Long Island R. R. Co.	397.10	2,516
New York, Brooklyn & Manhattan Beach Ry. Co.	.....	.....
Glendale & East River R. R. Co.	.....	.....
Lotbiniere & Megantic	(See Can Net)	.....
Louisiana & Arkansas Ry. Co.	302.25	1,055
Louisiana & North West R. R. Co.	99.20	24
Louisiana Ry. & Navigation Co.	338.63	1,285
Louisiana Ry. & Navigation Co. of Texas	206.08	282
Louisiana Southern Ry. Co.	60.76	.....
Louisville & Nashville R. R. Co.	5,044.09	65,542
Black Mountain R. R. Co.	.....	.....
Elkton & Guthrie R. R. Co.	.....	.....
Glasgow Ry. Co.	.....	.....
Henderson Belt R. R. Co.	.....	.....
Long Branch Coal R. R. Co.	.....	.....
Louisville & Nashville Terminal Co.	.....	.....
Nashville & Decatur R. R. Co.	.....	.....
Pontchartrain R. R. Co.	.....	.....
[fol. 1062-20]		
Southeast & Saint Louis Ry. Co.	.....	.....
Tennessee Western R. R. Co.	.....	.....
Mount Pleasant Southern Ry. Co.	.....	.....

Name of road	Average miles operated	Revenue freight cars owned
Louisville & Wadley R. R. Co.	10.00	
Louisville, Henderson & Saint Louis Ry.	199.45	666
McCloud River R. R. Co.	47.03	99
Macon, Dublin & Savannah R. R. Co.	94.22	16
Magma Arizona R. R. Co.	28.11	15
Maine Central R. R. Co.	1,207.65	7,387
Belfast & Moosehead Lake R. R. Co.	.....	.....
Dexter & Newport R. R. Co.	.....	.....
Dexter & Piscataquis R. R. Co.	.....	.....
Eastern Maine Ry. Co.	.....	.....
European & North American Ry.	.....	.....
Portland & Ogdensburg Ry.	.....	.....
Portland & Rumford Falls R. R.	.....	.....
Portland & Rumford Falls Ry.	.....	.....
Rumford Falls & Rangeley Lakes R. R. Co.	.....	.....
Upper Coos R. R. (New Hampshire)	.....	.....
Coos Valley R. R. Co.	.....	.....
Upper Coos R. R. (Vermont)	.....	.....
Bridgton & Saco River R. R. Co.	21.23	69
Sandy River & Rangeley Lakes R. R.	102.47	.....
Manistee & North-Eastern R. R. Co.	191.17	65
Leelanau Transit Co.	.....	.....
Manistique & Lake Superior R. R. Co.	38.47	254
Manufacturers Ry. Co.	30.95	614
Marianna & Blountstown R. R. Co.	43.56	8
Marion & Rye Valley Ry. Co.	17.70	36
Maryland & Pennsylvania R. R. Co.	80.69	132
Maryland & Pennsylvania Terminal Ry. Co.	.....	.....
York Terminal Ry. Co.	.....	.....
Maryland, Delaware & Virginia Ry. Co.	(See Penn.)	13
Mason City & Clear Lake R. R. Co.	21.00	.....
Mexican Northern Ry. Co.	88.00	.....
Mexican Pacific R. R. Co. Inc.	59.43	92
[fol. 1062-21]		
Mexican Railway	326.00	1,006
Mexico Northwestern Ry.	496.70	1,054
Miami Mineral Belt R. R. Co.	11.04	73
Michigan Central R. R. Co.	1,862.25	38,515
Battle Creek & Sturgis Ry. Co.	.....	.....
Canada Southern Ry. Co.	.....	.....
Saint Clair & Western R. R. Co.	.....	.....
Detroit Manufacturers R. R.	.....	.....
Detroit River Tunnel Co.	.....	.....
Joliet & Northern Indiana R. R. Co.	.....	.....
Lansing Manufacturers R. R.	.....	.....
Lansing Transit Ry.	.....	.....
Saint Joseph, South Bend & Southern R. R. Co.	.....	.....
Michigan R. R. Co.	.....	.....
Middletown & Unionville R. R. Co.	366.00	150
Midland Continental R. R.	14.30	2
Midland Terminal Ry. Co.	68.62	16
Midland Valley R. R. Co.	58.21	264
Wichita & Midland Valley R. R. Co.	364.90	711
Minatitlan R. R.	.....	.....
Minneapolis & Saint Louis R. R. Co.	8.07	.....
Iowa Central Ry.	1,647.26	6,989
Minneapolis, Northfield & Southern Ry.	.....	.....
Minneapolis, Red Lake & Manitoba Ry. Co.	70.81	52
	33.50	56

Name of road	Average miles operated	Revenue freight cars owned
Minneapolis, Saint Paul & Sault Sainte Marie Ry. Co.	1,402.53	24,303
Central Terminal Ry. Co.	.....	.....
Wisconsin Central Ry. Co.	.....	.....
Minnesota, Dakota & Western Ry. Co.	53.14	474
Minnesota Western R. R. Co.	83.80	166
Mississippi Central R. R. Co.	257.00	785
Mississippi Export R. R. Co.	42.00	14
Mississippi River & Bonne Terre Ry.	63.89	693
Mississippi Southern R. R.	66.16	73
[fol. 1062-22]		
Missouri & North Arkansas Ry. Co.	384.57	601
Missouri-Illinois R. R. Co.	139.05	543
Missouri-Kansas-Texas R. R. Co.	1,803.88	21,273
Boonville R. R. Bridge Co.	.....	.....
Missouri, Kansas & Texas Terminal Co. of St. Louis	.....	.....
Oklahoma Belt R. R. Co.	.....	.....
San Antonio Belt & Terminal Ry. Co.	.....	.....
Texas Central R. R. Co.	.....	.....
Wichita Falls & Northwestern Ry. Co. of Texas	.....	.....
Wichita Falls & Wellington Ry. Co. of Texas	.....	.....
Wichita Falls Ry. Co.	.....	.....
Missouri-Kansas-Texas R. R. Co. of Texas	1,389.26	600
Missouri Pacific R. R. Co.	7,359.97	43,429
Baring Cross Bridge Co.	.....	.....
Boonville, Saint Louis & Southern Ry. Co.	.....	.....
Cairo & Thebes R. R. Co.	.....	.....
Fort Smith Suburban Ry. Co.	.....	.....
Kiowa, Hardtner & Pacific R. R. Co.	.....	.....
Missouri Pacific Corporation in Nebraska	.....	.....
Coal Belt Electric Ry. Co.	54.22	10
Missouri Southern R. R. Co.	1,164.59	8,120
Mobile & Ohio R. R. Co.	.....	.....
Warrior Southern Ry. Co.	5.20	.....
Modesto & Empire Traction Co.	.....	.....
Modesto Interurban Ry.	106.75	.....
Monongahela Ry. Co.	.....	.....
Connellsville & Monongahela Ry. Co.	.....	.....
Redstone Central R. R. Co.	42.55	571
Monongahela Connecting R. R. Co.	133.65	17
Monongahela West Penn, Public Service Co.	27.06	148
Montana, Wyoming & Southern R. R. Co.	57.35	2,483
Montour R. R. Co.	44.78	296
Montpelier & Wells River R. R.	21.76	.....
Barre & Chelsea R. R. Co.	5.00	.....
Morrissey, Fernie & Michel Ry.	4.18	39
Muncie & Western R. R. Co.	7.00	.....
Municipal Docks & Terminals		
[fol. 1062-23]		
Muskegon Ry. & Navigation Co.	5.81	.....
Napierville Junction Ry. Co.	28.00	.....
Nashville, Chattanooga & Saint Louis Ry.	1,258.95	8,444
Western & Atlantic R. R.	.....	.....
Natchez & Louisiana Ry. & Transfer Co.	(See Mo. Pac.)	.....

Name of road	Average miles operated	Revenue freight cars owned
Natches & Southern Ry. Co.	6.43	.....
Natches, Columbia & Mobile R. R. Co.	29.42	119
National Railways of Mexico and Operated Lines (Mexican Government Administration)	8,317.00	8,309
Nevada Copper Belt R. R. Co.	40.64	16
Nevada Northern Ry. Co.	165.87	33
Newburgh & South Shore Ry. Co.	85.13	1,047
American Steel & Wire Co.'s R. R.	.....	.....
New Mexico Central Ry. Co.	115.70	.....
New Orleans & Lower Coast R. R. Co.	59.70	145
New Orleans Great Northern R. R. Co.	274.69	1,503
New Orleans, Natalbany & Natches Ry. Co.	28.22	155
New Orleans Public Belt R. R.	83.64	34
New Orleans Terminal Co.	79.13	.....
New York Central R. R. Co.	6,898.42	125,971
Amsterdam, Chuctanunda & Northern R. R. Co.	.....	.....
Beech Creek R. R. Co.	.....	.....
Beech Creek Extension R. R. Co.	.....	.....
Detroit, Hillsdale & South Western R. R. Co.	.....	.....
Detroit, Toledo & Milwaukee R. R. Co.	.....	.....
Erie & Kalamazoo R. R. Co.	.....	.....
Fort Wayne & Jackson R. R. Co.	.....	.....
Fulton Chain Ry. Co.	2.21	.....
Hudson River Bridge Co. at Albany.	.....	.....
Hudson River Connecting R. R. Corporation	.....	.....
Kalamazoo, Allegan & Grand Rapids R. R. Co.	.....	.....
Lake Erie & Pittsburg Ry. Co.	.....	.....
Lake Erie, Allkance & Wheeling R. R. Co.	.....	.....
Mahoning Coal R. R. Co.	.....	.....
New Jersey Junction R. R. Co.	.....	.....
New York & Harlem R. R. Co.	.....	.....
Saint Lawrence & Adirondack Ry. Co.	.....	.....
Troy & Greenbush R. R. Association	.....	.....
[fol. 1062–24]		
West Shore R. R. Co.	.....	.....
Wallkill Valley R. R. Co.	.....	.....
Raquette Lake Ry. Co.	24.27	.....
New York, Chicago & St. Louis R. R. Co.	1,695.30	21,972
Lake Erie & Western	.....	.....
Nickel Plate Connecting R. R. Corporation	.....	.....
Toledo St. Louis & Western	.....	.....
New York, New Haven & Hartford R. R. Co.	1,985.97	31,056
Chatham R. R. Co.	.....	.....
Harlem River & Port Chester R. R. Co.	.....	.....
Holyoke & Westfield R. R. Co.	.....	.....
Norwich & Worcester R. R. Co.	.....	.....
Old Colony R. R. Co.	.....	.....
Boston & Providence R. R. Corporation	.....	.....
Providence, Warren & Bristol R. R. Co.	.....	.....
Providence & Worcester R. R. Co.	.....	.....

Name of road	Average miles operated	Revenue freight cars owned
New York, Ontario & Western Ry. Co.	569.49	5,192
Ellenville & Kingston R. R. Co.	.....	.....
Ontario, Carbondale & Scranton Ry. Co.	.....	.....
Pecksport Connecting Ry. Co.	.....	.....
Port Jervis, Monticello & Summitville R. R. Co.	.....	.....
Rome & Clinton R. R. Co.	.....	.....
Utica, Clinton & Binghamton R. R. Co.	.....	.....
Wharton Valley Ry. Co.	.....	.....
Niagara Junction Ry. Co.	20.04	.....
Niagara, St. Catherines & Toronto	(See Can. Nat)	.....
Norfolk & Portsmouth Belt Line R. R. Co.	72.02	.....
Norfolk & Western Ry. Co.	2,240.69	45,140
Tug River & Kentucky R. R. Co.	.....	.....
West Virginia & Ironton Ry. Co.	.....	.....
Williamson & Pond Creek R. R. Co.	.....	.....
Norfolk Southern R. R. Co.	931.88	3,391
Atlantic & North Carolina R. R. Co.	.....	.....
Durham & South Carolina R. R. Co.	.....	.....
Carolina R. R. Co.	15.23	.....
North & South Ry. Co.	41.07	2
Northeast Oklahoma R. R. Co.	49.00	92
Northern Pacific Ry. Co.	6,679.94	48,948
Gilmore & Pittsburgh R. R. Co. Ltd.	120.02	44
Minnesota & International Ry. Co.	179.52	476
Big Fork & Northern Ry. Co.	.....	.....
[fol. 1062-25]		
Northwestern Pacific R. R. Co.	488.36	1,273
Northwestern R. R. Co. of South Carolina	80.50	.....
Norwood & Saint Lawrence R. R. Co.	18.02	84
Ohio Public Service Co.	49.59	7
Oklahoma City-Ada-Atoka Ry. Co.	129.43	54
Oklahoma City-Shawnee Interurban Ry. Co.	.....	.....
Oklahoma, New Mexico & Pacific Ry. Co.	35.96	.....
Ringling & Oil Fields Ry. Co.	.....	.....
Oklahoma Ry. Co.	78.00	10
Oklahoma-Southwestern Ry. Co.	23.85	5
Oklahoma Union Ry. Co.	19.36	1
Olean, Bradford & Salamanca Ry. Co.	90.06	.....
Oregon Electric Ry. Co.	154.00	.....
Osage Ry. Co.	20.54	.....
Oshawa Ry. Co.	17.35	1
Pacific & Idaho Northern Ry. Co.	89.90	26
Pacific Coast R. R. Co.	53.60	496
Pacific Electric Ry. Co.	615.00	2,813
Pacific Great Eastern Ry. Co.	361.2	239
Panhandle & Santa Fe Ry. Co.	858.49	(See A. T. & S. F.)
North Texas & Santa Fe Ry. Co.	.....	.....
Pecos & Northern Texas Ry. Co.	.....	.....
Pecos River R. R. Co.	.....	.....
South Plains and Santa Fe Ry. Co.	.....	.....
Paris & Mount Pleasant R. R. Co.	51.43	12
Parral & Durango R. R.	106.70	.....
Patapsco & Back Rivers R. R. Co.	58.70	.....
[fol. 1062-26]		
Pennsylvania R. R. Co.	10,568.00	264,888
Cleveland & Pittsburgh R. R. Co.	.....	.....
Cumberland Valley & Martinsburg R. R. Co.	.....	.....

Name of road	Average miles operated	Revenue freight cars owned
Pennsylvania R. R. Co. (continued)—		
Delaware River R. R. & Bridge Co.		
Erie & Pittsburgh R. R. Co.		
Freehold & Jamesburg Agricultural R. R. Co.		
Harrison & East Newark Connecting R. R. Co.		
Johnsonburg R. R. Co.		
New York Bay R. R. Co.		
New York, Philadelphia & Norfolk R. R. Co.		
Northern Central Ry. Co.		
Elmira & Lake Ontario R. R. Co.		
Elmira & Williamsport R. R. Co.		
Lykens Valley R. R. & Coal Co.		
Shamokin Valley & Pottsville R. R. Co.		
Union R. R. Co. of Baltimore		
York, Hanover & Frederick Ry. Co.		
Cincinnati, Lebanon & Northern Ry. Co.		
Cleveland, Akron & Cincinnati Ry. Co.		
Englewood Connecting Ry. Co.		
Grand Rapids & Indiana Ry. Co.		
Cincinnati, Richmond & Fort Wayne R. R. Co.		
Indianapolis & Frankfort R. R. Co.		
Louisville Bridge & Terminal Ry. Co.		
Massillon & Cleveland R. R. Co.		
Ohio Connecting Ry. Co.		
Pittsburgh, Cincinnati, Chicago & Saint Louis R. R. Co.		
Little Miami R. R. Co.		
Columbus & Xenia R. R. Co.		
Dayton & Western R. R. Co.		
Pittsburgh & Cross Creek R. R. Co.		
Terre Haute & Peoria R. R. Co.		
Pittsburgh, Ohio Valley & Cincinnati R. R. Co.		
Pittsburgh, Youngstown & Ashtabula Ry. Co.		
South Chicago & Southern R. R. Co.		
Toledo, Columbus & Ohio River R. R. Co.		
Wheeling Terminal Ry. Co.		
Youngstown & Ravenna R. R. Co.		
Pennsylvania-Detroit R. R. Co.		
Pennsylvania Tunnel & Terminal R. R. Co.		
Perth Amboy & Woodbridge R. R. Co.		
Philadelphia, Baltimore & Washington R. R. Co.		
Catonsville Short Line R. R. Co.		
Delaware R. R. Co.		
Delaware, Maryland & Virginia R. R. Co.		
Pittsburgh, Fort Wayne & Chicago Ry. Co.		
Southern Pennsylvania Ry. & Mining Co.		
Tipton R. R. Co.		

Name of road	Average miles operated	Revenue freight cars owned
Pennsylvania R. R. Co. (continued)—		
United New Jersey R. R. & Canal Co.	.....	.....
Belvidere Delaware R. R. Co.	.....	.....
Camden & Burlington County Ry. Co.	.....	.....
Philadelphia & Trenton R. R. Co.	.....	.....
Connecting Ry. Co.	.....	.....
[fol. 1062–27]		
Rocky Hill R. R. & Transportation Co.	.....	.....
Western New York & Pennsylvania Ry. Co.	.....	.....
Bradford R. R. Co.	.....	.....
Baltimore, Chesapeake & Atlantic Ry. Co.	113.21	68
Baltimore & Eastern R. R. Co.	38.17	8
Ohio River & Western Ry. Co.	110.47	.....
Pennsylvania & Atlantic R. R. Co.	61.79	.....
Philadelphia & Beach Haven R. R. Co.	12.11	.....
Rosslyn Connecting R. R. Co.	3.14	.....
Waynesburg & Washington R. R. Co.	28.19	.....
West Jersey & Seashore R. R. Co.	367.54	.....
Cooper's Point & Philadelphia Ferry Co.	.....	.....
Kensington & New Jersey Ferry Co.	.....	.....
Connecting Terminal R. R. Co.	2.91	.....
Dayton Union Ry. Co.	5.56	.....
Penn Yan & Lake Shore	.....	.....
Peoria & Pekin Union Ry. Co.	163.76	108
Peoria, Hanna City & Western Ry. Co.	5.65	.....
Peoria Ry. Terminal Co.	30.95	.....
Pere Marquette Ry. Co.	2,288.26	17,582
Fort Street Union Depot Co.	.....	.....
Huron & Western R. R. Co.	.....	.....
Petaluma & Santa Rosa R. R. Co.	43.00	.....
Philadelphia, Bethlehem & New England R. R. Co.	72.84	.....
Piedmont & Northern Ry. Co.	127.00	283
Pittsburgh & Lake Erie R. R. Co.	231.36	35,707
Mahoning State Line R. R. Co.	.....	.....
Pittsburgh, McKeesport & Youghiogheny R. R. Co.	.....	.....
Youghiogheny Northern Ry. Co.	.....	.....
Pittsburg & Shawmut R. R. Co.	102.96	2,367
Pittsburgh & West Virginia Ry. Co.	92.34	5,587
West Side Belt R. R. Co.	.....	.....
Pittsburgh, Chartiers & Youghiogheny Ry. Co.	21.96	29
Pittsburgh, Kisbon & Western R. R. Co.	23.30	11
Pittsburg, Shawmut & Northern R. R. Co.	210.56	1,073
Clarion River Ry. Co.	.....	.....
Kersey R. R. Co.	.....	.....
Rochester, Hornellsville & Lackawanna R. R.	.....	.....
[fol. 1062–28]		
Port Huron & Detroit R. R. Co.	19.08	.....
Portland Electric Power Co.	81.50	431
Portland Terminal Co.	152.20	.....
Port Utilities Commission of Charleston, S. C.	13.64	.....
Potato Creek R. R. Co.	5.04	.....

Name of road	Average miles operated	Revenue freight cars owned
Prattsburg Ry. Corporation	11.44	.....
Prescott & Northwestern R. R. Co.	106.00	44
Quebec Central Ry.	333.00	1,006
Quebec, Montreal & Southern Ry. Co.	189.00	1,411
Quebec Ry. Light & Power Co.	33.00	144
Quincy, Omaha & Kansas City R. R. Co.	250.84	3
Rahway Valley Co.	12.45	.....
Rahway Valley R. R. Co.	.....	.....
Rapid City, Black Hills & Western R. R. Co.	33.50	7
Rapid R. R. Co.	68.00	.....
Raritan River R. R. Co.	23.20	50
Reading Co.	1,148.15	43,155
Allentown R. R. Co.	.....	.....
Allentown Terminal R. R. Co.	.....	.....
Catawissa R. R. Co.	.....	.....
Chestnut Hill R. R. Co.	.....	.....
Colebrookdale R. R. Co.	.....	.....
Delaware & Bound Brook R. R. Co.	.....	.....
East Trenton R. R. Co.	.....	.....
East Pennsylvania R. R. Co.	.....	.....
Little Schuylkill Navigation R. R. & Coal Co.	.....	.....
East Mahonoy R. R. Co.	.....	.....
Mill Creek & Mine Hill Navigation & R. R. Co.	.....	.....
Mine Hill & Schuylkill Haven R. R. Co.	.....	.....
Mount Carbon & Port Carbon R. R. Co.	.....	.....
Mount Carmel R. R. Co.	.....	.....
North Pennsylvania R. R. Co.	.....	.....
People's Ry. Co.	.....	.....
Philadelphia & Reading Terminal R. R. Co.	.....	.....
Philadelphia, Germantown & Norristown R. R. Co.	.....	.....
Plymouth R. R. Co.	.....	.....
Schuylkill Bridge at Swedes Ford	.....	.....
Schuylkill Valley Navigation & R. R. Co.	.....	.....
[fol. 1062–29]		
Wilmington & Northern R. R. Co.	.....	.....
Atlantic City R. R. Co.	169.53	.....
Catasauqua & Fogelsville R. R. Co.	31.47	.....
Gettysburg & Harrisburg Ry. Co.	41.60	.....
North East Pennsylvania R. R. Co.	25.62	.....
Perkiomen R. R. Co.	41.81	.....
Philadelphia & Chester Valley R. R. Co.	23.96	.....
Philadelphia, Newtown & New York R. R. Co.	22.18	.....
Pickering Valley R. R. Co.	11.21	.....
Port Reading R. R. Co.	19.71	.....
Reading & Columbia R. R. Co.	66.02	.....
Reading, Marietta & Hanover R. R. Co.	.....	.....
Stony Creek R. R. Co.	10.23	.....
Williams Valley R. R. Co.	11.08	.....
Richmond, Fredericksburg & Potomac R. R. Co.	117.62	1,320
Rio Grande & Eagle Pass Ry. Co.	26.89	126
River Terminal Ry. Co.	13.24	111
Roberval-Saguenay Ry. Co.	42.5	190
Rockingham R. R. Co.	22.02	.....

Name of road	Average miles operated	Revenue freight cars owned
Rock Island Southern Ry. Co.	85.33	145
Galesburg & Western R. R. Co.	.....	.....
Roscoe, Snyder & Pacific Ry. Co.	49.77	.....
Rutland R. R. Co.	413.01	2,102
Addison R. R. Co.	.....	.....
Sacramento Northern Ry.	213.00	280
Saint Joseph Belt Ry. Co.	25.51	.....
Saint Joseph Terminal R. R. Co.	15.03	.....
Saint Louis & Belleville Electric Ry. Co.	14.00	506
Saint Louis & Hannibal R. R. Co.	103.40	1,416
Saint Louis & O'Fallon Ry. Co.	8.94	574
Saint Louis, Kennett & Southeastern R. R. Co.	20.00	12
Saint Louis-San Francisco Ry. Co.	4,760.77	36,523
Kansas City, Fort Scott & Memphis Ry. Co.	.....	.....
Kansas City & Memphis Ry. & Bridge Co.	.....	.....
Kansas City, Clinton & Springfield Ry. Co.	.....	.....
Kansas City, Memphis & Birmingham R. R. Co.	.....	.....
[fol. 1062-30]		
Quapaw-Lincolnville R. R. Co.	.....	.....
Brownwood North & South Ry. Co.	.....	.....
Fort Worth & Rio Grande Ry. Co.	233.52	.....
Paris & Great Northern R. R. Co.	.....	.....
Quanah, Acme & Pacific Ry. Co.	.....	49
St. Louis, San Francisco & Texas Ry. Co.	137.95	.....
Saint Louis Southwestern Ry. Co.	969.81	10,244
Central Arkansas & Eastern R. R. Co	.....	.....
Gray's Point Terminal Ry. Co.	.....	.....
Paragould Southeastern Ry. Co.	.....	.....
Pine Bluff Arkansas River Ry.	.....	.....
Valley Terminal Ry.	.....	.....
St. Louis Southwestern Ry. Co. of Texas	807.20	.....
Stephenville North & South Texas Ry. Co.	.....	.....
Dallas Terminal Ry. & Union Depot Co.	11.36	.....
Shreveport Bridge & Terminal Co.	.36	.....
Saint Louis, Troy & Eastern R. R. Co.	25.91	1,080
Saint Louis & Illinois Belt Ry.	.....	.....
Salt Lake & Utah R. R. Co.	75.6	114
San Antonio Southern Ry. Co.	54.60	14
San Diego Electric Ry. Co.	106.00	34
San Francisco-Sacramento R. R. Co.	111.00	57
San Antonio, Uvalde & Gulf R. R. Co.	317.26	100
Sandersville R. R. Co.	3.90	.....
Sandy Valley & Elkhorn Ry. Co.	31.60	.....
Savannah & Atlanta Ry.	147.17	49
Port Wentworth Terminal Corporation	.....	.....
Savannah & Statesboro Ry. Co.	32.69	.....
Scotts Run Ry. Co.	26.04	.....
Monongahela & Ohio R. R. Co.	.....	.....
Seaboard Air Line Ry. Co.	3,571.19	21,377
Florida, Western & Northern R. R. Co.	.....	.....
Georgia & Alabama Terminal Co.	.....	.....
Kissimmee River Ry.	.....	.....
Wilmington Ry. Bridge Co.	.....	.....
Charlotte, Monroe & Columbia R. R. Co.	17.85	.....

Name of road	Average miles operated	Revenue freight cars owned
Seaboard Air Line Ry. Co. (continued)—		
Chesterfield & Lancaster R. R. Co.	36.72	.....
East & West Coast Ry.	50.12	.....
Raleigh & Charleston R. R. Co.	42.58	.....
Marion & Southern R. R. Co.	1.63	.....
[fol. 1062–31]		
Tampa & Gulf Coast R. R. Co.	86.09	4
Tampa Northern R. R. Co.	64.26	.....
McRae Terminal Ry.	.....	.....
Sibley, Lake Bisteneau & Southern Ry. Co.	27.87	.....
Sierra Ry. Co. of California	76.11	49
Sioux City Terminal Ry. Co.	18.47	.....
South Buffalo Ry. Co.	107.90	29
South Brooklyn Ry. Co.	18.60	133
Southern Ry. Co.	6,868.81	74,534
Athens Belt Line R. R. Co.	.....	.....
Atlanta & Charlotte Air Line Ry. Co.	.....	.....
Elberton Southern Ry. Co.	.....	.....
Atlantic & Danville Ry. Co.	.....	.....
Cumberland Ry. Co.	.....	.....
Georgia Midland Ry. Co.	.....	.....
Lockhart R. R.	.....	.....
Memphis-Chattanooga Ry.	.....	.....
Mobile & Birmingham R. R. Co.	.....	.....
North & South Carolina R. R. Co.	.....	.....
North Carolina R. R. Co.	.....	.....
North Carolina Midland R. R. Co.	.....	.....
Richmond & Mecklenburg R. R. Co.	.....	.....
Southern Ry.-Carolina Division	.....	.....
Transylvania R. R. Co.	.....	.....
Virginia & Southwestern Ry. Co.	.....	.....
Wooldridge Jellico Coal Co.'s R. R.	.....	.....
Alabama Great Southern R. R. Co.	318.35	.....
Belt Ry. Co. of Chattanooga	.....	.....
Chattanooga Terminal Ry. Co.	.....	.....
Asheville & Creggy Mountain Ry. Co.	4.44	.....
Asheville Southern Ry. Co.	.....	.....
Atlantic & Yadkin Ry. Co.	16.10	.....
Blue Ridge Ry. Co.	44.00	.....
Carolina & Tennessee Southern Ry. Co.	16.96	.....
Danville & Western Ry. Co.	82.04	.....
Ensley Southern Ry. Co.	29.27	.....
Georgia Southern & Florida Ry. Co.	401.74	.....
Hartwell Ry. Co.	10.10	.....
High Point, Randleman, Asheboro & Southern R. R. Co.	27.84	.....
New Orleans & Northeastern R. R. Co.	207.74	.....
Northern Alabama Ry. Co.	110.50	.....
Sievern & Knoxville R. R. Co.	27.72	.....
Cincinnati, New Orleans & Texas Pacific Ry. Co.	338.17	.....
Cincinnati Southern Ry.	.....	.....
Harriman & Northeastern R. R. Co.	9.64	.....
[fol. 1062–32]		
State University R. R. Co.	10.15	.....
Tallulah Falls Ry. Co.	57.10	.....
Tennessee & Carolina Southern Ry. Co.	30.64	.....
Yadkin R. R. Co.	52.23	.....
Tallassee Power Co's. R. R.	.....	.....
St. Johns River Terminal Co.	39.72	.....
Cincinnati Burnside & Cumberland River Ry. Co.	4.03	.....

Name of road	Average miles operated	Revenue freight cars owned
Southern New York Ry. Inc.	66.00	18
Southern Ohio Public Service Co.	66.00	.....
Southern Pacific Co.	7,425.54	73,048
Arizona Eastern R. R. Co.	382.66	.....
Central Pacific Ry. Co.	.....	.....
El Paso & Southwestern R. R. Co.	1,139.90	.....
Alamogordo & Sacramento Mt. Ry. Co.	.....	.....
Arizona & New Mexico Ry. Co.	.....	.....
Burro Mt. R. R. Co.	.....	.....
Dawson Ry. Co.	.....	.....
El Paso & Northeastern R. R. Co.	.....	.....
El Paso & Northeastern Ry. Co.	.....	.....
El Paso & Rock Island Ry. Co.	.....	.....
El Paso & Southwestern R. R. Co. of Texas	.....	.....
Marion & Linn County R. R. Co.	.....	.....
Oregon & California R. R. Co.	.....	.....
Phoenix & Eastern R. R. Co.	.....	.....
South Pacific Coast Ry. Co.	.....	.....
Southern Pacific R. R. Co.	.....	.....
New Mexico & Arizona R. R. Co.	.....	.....
Porterville Northeastern Ry. Co.	.....	.....
Tucson & Nogales R. R. Co.	.....	.....
Galveston, Harrisburg & San Antonio Ry. Co.	1,379.60	.....
Houston & Shreveport R. R. Co.	40.74	.....
Houston & Texas Central R. R. Co.	929.11	.....
Houston & East & West Texas Ry. Co.	191.60	.....
Lake Charles & Northern R. R. Co.	72.66	.....
Louisiana Western R. R. Co.	207.74	.....
Morgan's Louisiana & Texas R. R. & S. S. Co.	400.67	.....
Franklin & Abbeville Ry. Co.	51.58	.....
Iberia & Vermilion Ry. Co.	21.44	.....
San Diego & Arizona Ry. Co.	155.89	200
Texas & New Orleans R. R. Co.	507.95	.....
Texas State R. R.	.....	.....
San Antonio & Arkansas Pass Ry. Co.	739.36	.....
Southern Pacific Terminal Co.	.....	.....
Southern Pacific Co. of Mexico	1,245.92	1,000
South Georgia Ry. Co.	81.50	12
Spokane International Ry. Co.	165.69	256
Coeur d'Alene & Pend d'Oreille Ry. Co.	.....	.....
[fol. 1062–33]		
Spokane, Portland & Seattle Ry. Co.	554.60	780
Oregon Trunk Ry.	151.92	.....
United Rys. Co.	54.78	.....
Spokane & Eastern Ry. & Power Co.	(See Inland Empire)	147
Staten Island Rapid Transit Ry. Co.	23.54	.....
Staten Island Ry. Co.	.....	.....
Steelton & Highspire R. R. Co.	42.00	.....
Stewartstown R. R. Co.	16.20	3
Sugar Land Ry. Co.	62.66	16
Susquehanna & New York R. R. Co.	67.72	130
Susquehanna River & Western R. R. Co.	33.71	1
Sidney & Louisburg Ry.	129.00	.....
Sylvanie Central Ry. Co.	14.65	.....
Tampa & Jacksonville Ry. Co.	56.00	21
Temiscouata Ry.	113.00	119
Temiskaming & Northern Ontario Ry. Com.	388.5	544

Name of road	Average miles operated	Revenue freight cars owned
Tennessee, Alabama & Georgia Ry.	94.59	90
Tennessee Central Ry. Co.	296.56	500
Nashville Terminal Co.	.....	.....
Terminal R. R. Assn. of St. Louis	184.90	.....
East St. Louis & Carondelet Ry. Co.	.....	.....
East St. Louis Belt R. R. Co.	.....	.....
Illinois Transfer R. R. Co.	.....	.....
St. Louis Belt & Terminal Ry. Co.	.....	.....
St. Louis Bridge Co.	.....	.....
St. Louis Terminal Ry. Co.	.....	.....
Terminal R. R. of East St. Louis	.....	.....
Tunnel R. R. of St. Louis	.....	.....
St. Louis Merchants Bridge Terminal Ry. Co.	133.89	.....
Granite City & Madison Belt Line R. R.	.....	.....
Madison, Illinois & St. Louis Ry. Co.	.....	.....
St. Louis Transfer Ry. Co.	.....	.....
Wiggins Ferry Co.	25.83	.....
East St. Louis Connecting Ry. Co.	.....	.....
	27.75	.....
[fol. 1062-34]		
Texas & Pacific Ry. Co.	1,952.74	10,239
Denison & Pacific Suburban Ry. Co.	7.85	.....
Texas Mexican Ry. Co.	161.85	.....
Texas Midland R. R.	125.20	183
Texas, Oklahoma & Eastern R. R. Co.	39.75	23
Texas Pacific-Missouri-Pacific Terminal R. R. of New Orleans	75.12	.....
Texas Short Line Ry. Co.	10.04	22
Texas South-Eastern R. R. Co.	20.91	77
Thousand Island Ry. Co.	6.33	1
Toledo & Indiana R. R. Co.	56.90	12
Toledo & Ohio Central Ry. Co.	(See N. Y. C.)	3,763
Manufacturer's Ry. Co. (of Ohio)	6.05	.....
Toledo & Western Ry. Co.	75.00	9
Toledo, Angola & Western Ry. Co.	10.50	5
Toledo, Peoria & Western Ry. Co.	247.70	882
Toledo Terminal R. R. Co.	77.09	19
Tonopah & Goldfield R. R. Co.	112.56	117
Goldfield Consolidated Mines Co.	.....	.....
Tonopah & Tidewater R. R. Co.	169.07	30
Toronto, Hamilton & Buffalo Ry.	104.00	1,305
Tremont & Gulf Ry. Co.	72.75	315
Trinity & Brazos Valley Ry. Co.	368.89	1,130
Tuckerton R. R. Co.	29.00	.....
Ulster & Delaware R. R. Co.	128.88	161
Union Pacific R. R. Co.	3,713.61	53,603
Los Angeles & Salt Lake R. R. Co.	1,209.10	.....
Oregon Short Line R. R. Co.	2,375.02	.....
Oregon-Washington R. R. & Nv. Co.	2,282.89	.....
Des Chutes R. R. Co.	.....	.....
St. Joseph & Grand Island Ry. Co.	258.50	487
[fol. 1062-35]		
Union R. R. Co. (of Pennsylvania)	290.69	5,063
Monongahela Southern R. R. Co.	.....	.....
Saint Clair Terminal R. R. Co.	.....	.....
Union Ry. Co.	84.57	.....
Iron Mt. R. R. of Memphis	.....	.....
Union Stock Yards Co. of Omaha (Ltd.)	35.05	9

Name of road	Average miles operated	Revenue freight cars owned
Union Terminal Co.	16.64	.....
Union Traction Co.	77.00	26
Union Transportation Co.	24.37	.....
United Ry. Co.	9.20	2
Unity Rys. Co.	3.70	.....
Upper Marion & Plymouth R. R. Co.	6.57	39
Utah–Idaho Central R. R. Co.	147.00	177
Utah Ry. Co.	102.18	2,018
Vicksburg, Shreveport & Pacific Ry. Co.	188.46	911
Virginia & Carolina Southern R. R. Co.	52.94	1
Virginia & Truckee Ry.	67.48	21
Virginian Ry. Co.	544.97	10,187
E. E. White Coal Co's. R. R.	.....	.....
Virginian & Western Ry. Co.	.....	.....
Virginian Terminal Ry. Co.	.....	.....
Wabash Ry. Co.	2,489.93	25,472
Brunswick & Chillicothe R. R. Co.	.....	.....
Hannibal Bridge Co.	.....	.....
Kansas City, Excelsior Springs & Northern Ry. Co.	.....	.....
Louisiana & Pike County R. R. Co.	.....	.....
Saint Louis, Council Bluffs & Omaha R. R. Co.	1.00	.....
New Jersey, Indiana & Illinois R. R. Co.	11.32	350
Detroit & Western Ry.	4.97	.....
La Fayette Union Ry. Co.	.....	.....
Wabash, Chester & Western R. R. Co.	64.83	11
Waco, Beaumont, Trinity & Sabine Ry. Co.	114.97	26
Wadley, Southern Ry. Co.	88.74	.....
[fol. 1062–36]		
Washington & Old Dominion Ry.	89.00	10
Washington & Vandemere R. R. Co.	40.52	.....
Washington, Idaho & Montana Ry. Co.	49.37	309
Waterloo, Cedar Falls & Northern Ry. Co.	139.00	130
Weatherford, Mineral Wells & Northwestern Ry. Co.	41.20	.....
Western Allegheny R. R. Co.	47.89	23
Western Maryland Ry. Co.	804.44	9,911
Baltimore & Cumberland Valley R. R. Extension Co.	.....	.....
Fairmont Bingamon Ry. Co.	.....	.....
Fairmont Helen's Run Ry. Co.	.....	.....
Somerset Coal Ry. Co.	.....	.....
Washington & Franklin Ry. Co.	.....	.....
Williamsport, Nessle & Martinsburg Ry. Co.	.....	.....
Western Pacific R. R. Co.	1,042.68	6,217
Rio Grande Southern R. R. Co.	179.06	.....
Calumet Fuel Co's R. R.	.....	.....
Western Ry. of Alabama	133.42	(See A. & W. P.)
Wharton & Northern R. R. Co.	21.81	46
Wheeling & Lake Erie Ry. Co.	511.60	10,646
Adena, Cadiz & New Athens Ry. Co	.....	.....
Toledo Belt Ry. Co.	.....	.....
Zanesville Belt & Terminal Ry. Co.	.....	.....
Logan & West Virginia Ry. Co.	25.25	.....
White River R. R. Co. (of Vermont)	19.34	.....
Wichita Falls & Southern R. R. Co.	103.10	146
Wichita Falls & Southern Ry. Co.	.....	.....
Wichita Falls, Ranger & Fort Worth R. R. Co.	74.97	18
Wichita Northwestern Ry. Co.	100.20	10

Name of road	Average miles operated	Revenue freight cars owned
Wichita Valley Ry. Co.	271.92	97
Abilene & Northern Ry. Co.	.....	.....
Stamford & Northwestern Ry. Co.	.....	.....
Wichita Falls & Oklahoma Ry. Co.	.....	.....
Wichita Falls & Oklahoma R. R. Co. of Oklahoma	.....	.....
Wichita Valley R. R. Co.	.....	.....
Wilkes-Barre & Hazleton Ry.	30.10	14
[fol. 1062–37]		
Williamsport & North Branch Ry. Co.	46.00	6
Windsor, Essex & Lake Shore Rapid Ry. Co.	37.00	.....
Winston-Salem Southbound Ry. Co.	94.52	166
Wisconsin & Michigan R. R. Co.	75.70	162
Wisconsin & Northern Ry.	(See So. Line)	.....
Woodstock Ry. Co.	13.88	3
Wrightsville & Tennille R. R. Co.	103.60	26
Yosemite Valley R. R. Co.	79.17	252
Zanesville & Western Ry. Co.	(See N. Y. C.)	(See T. & O. C.)
Zanesville Terminal R. R. Co.	.....	.....
Total 1400 roads	312,371.16	2,607,708

Chicago, Ill.,
February 25, 1927.
H-J.

[fol. 1063] Ex. 16 Before I. C. C. in Docket No. 17801

United States Railroad Administration, Director General of Railroads, Division of Operation, Car Service Section

Circular CS-59

Washington, April 10, 1919.

To Railroads:

Effective May 1, 1919, the following regulations will govern in the settlement of passenger and freight car hire accounts:

1. Settlement of passenger and freight car hire accounts between Canadian and United States roads will be made in accordance with rules annexed hereto as Appendix "A."

2. Settlement of passenger and freight car hire accounts between Federal and non-Federal roads within the United States will be made in accordance with rules annexed hereto as Appendix "B."

3. Assignments of non-Federal roads to Federal roads for purpose of settlement in accordance with rules con-

tained in Appendix "B" will be as currently shown in Official Railway Equipment Register.

4. Mexican roads will be treated the same as non-Federal roads, but no change will be made in present method of settlement.

Exceptions

5. The above regulations will not apply to the following classes of roads:

1. (a) Roads found to be plant facilities.

(b) Roads receiving allowances on a plant-facility basis under Section 15 of the Act to Regulate Commerce.

(c) Roads which do not participate in joint through rates either directly or through absorption of regularly published and filed switching charges, and which do not receive any allowances.

2. (a) Roads found to be industrial common carriers.

6. Cars interchanged with roads covered by Exception No. 1 will be subject to the current demurrage tariffs from time of delivery upon interchange track until returned thereto; demurrage to be assessed against consignors or consignees.

7. Cars interchanged with roads described in Exception No. 2 will be subject to rules and regulations outlined in Appendix "C," annexed hereto.

8. The "Car Hire Bureau" referred to in Appendix "A" will be located at Buffalo, N. Y., under the supervision of J. W. Smith, as Manager.

9. The rendering of per diem reports between roads in United States and roads in Canada will be discontinued subsequent to reports for the month of April, 1919.

10. Per Diem due to or from Canadian Roads account of discrepancies and reclaims for period prior to May 1, 1919, will be settled through the Bureau. Data to enable settlement of these amounts will be furnished to the Bureau in such detail as may be required by the Bureau.

W. C. Kendall, Manager Car Service Section.

Approved:

W. T. Tyler, Director, Division of Operation.

[fol. 1063-1] Appendix "A"

Rules Governing Settlement of Freight and Passenger Car Hire Accounts Between Canadian and United States Roads

A bureau to be known as the "Car Hire Bureau" will be established by the United States Railroad Administration for the purpose of maintaining a record of the interchange of all railroad-owned cars between Canadian and United States *States* roads and for the settlement of freight and passenger car hire.

Freight Cars

1. The Code of Per Diem Rules shall govern except as hereinafter modified.

2. The Bureau shall receive a copy of the interchange report made at all points where cars are interchanged between Canadian and United States roads.

3. (a) Each Canadian road shall report monthly to the Bureau all per diem earned by railroad cars (other than Canadian roads' cars) on its line, showing the name of road delivered to and date of such delivery.

(c) The Bureau shall report monthly to each Canadian road all per diem earned by its cars while on roads in the United States and Mexico.

4. Reclaims due from United States and Mexican roads to Canadian roads under Per Diem Rules 5 and 14, and on account of special conditions, shall be reported by the Federal roads to the Bureau in such detail as may be required by the Bureau.

These reclaims shall be included in the Bureau's report to the proper Canadian road.

5. Reclaims due from Canadian roads to United States and Mexican roads under Per Diem Rule 5 and 14, and on account of special conditions, shall be included in per diem reports of Canadian roads to the Bureau in such detail as may be required by the Bureau. Each Federal road shall report to the Bureau reclaims due from Canadian roads in such detail as may be required by the Bureau.

6. Each Federal road shall notify the Bureau and the car owners respecting cessation or suspension of per diem under Per Diem Rules 7 and 8 on cars of Canadian roads on its road or non-Federal roads assigned to it and obtain acknowledging of receipt thereof from the Bureau.

7. Each Canadian road shall notify the Bureau and the car owners of the cessation or suspension of per diem as provided by Per Diem Rules 7 and 8 on cars of United States and Mexican roads while on its line.

Passenger Cars

8. The rates named in Car Service Rules for use of passenger equipment shall govern.

9. Each Canadian road shall report monthly to the Bureau all mileage and per diem earned by railroad-owned passenger equipment (other than Canadian roads' cars) on its line, showing the name of road delivered to and date of such delivery.

10. The Bureau shall report monthly to each Canadian road all mileage and per diem earned by its passenger equipment while on roads in the United States and Mexico.

11. Each Federal road handling passenger equipment of Canadian roads shall submit monthly statement to the Bureau showing earnings of such cars, whether mileage or per diem, on its rails and the rails of non-Federal roads assigned to it.

[fol. 1063-2] 12. Each Federal and non-Federal road make monthly reports to the car owners, showing by car cumber the wheelage of passenger equipment of Canadian roads on its line.

Each Canadian road shall make monthly wheelage reports to car owners, showing by car number the wheelage of all Federal and non-Federal passenger equipment on its line.

Appendix "B"

Rules Governing Settlement for Freight and Passenger Car Hire Accounts Between Federal and Non-Federal Roads

Each non-Federal road shall be assigned to a Federal road with which it shall make settlement of freight and passenger car hire as provided in these rules.

NOTE.—Each non-Federal road having registration in the Official Railway Equipment Register shall insert therein the name of the Federal road to which it is assigned.

Freight Cars

1. The Code of Per Diem Rules shall govern except as hereinafter modified.

2. Each non-Federal road (except those included in paragraph 5 of Circular CS-59) shall report to the Federal road to which it is assigned all per diem earned by railroad-owned cars on its line (with a record of receipt and delivery of such cars) and to which it shall pay all per diem due.

3. Each Federal road shall be responsible for the payment of per diem on cars owned by the non-Federal road or roads assigned to it while such cars are away from home. The non-Federal road shall submit monthly statement to the Federal road to which it is assigned, showing all per diem earned on its cars while they are away from home, with record of interchange with the home road.

4. A Federal road handling cars (other than cars of its own ownership) in terminal switching service for a non-Federal road may reclaim an amount equal to the actual time, with a maximum of five days on any one car, which shall be paid by the non-Federal road to the Federal road to which it is assigned.

5. A non-Federal road handling cars (other than cars of its own ownership) in terminal switching service for a Federal road may reclaim an amount equal to the actual time, with a maximum of five days on any one car, which shall be paid by the Federal road to which the non-Federal road is assigned.

6. When a non-Federal road under its contract with the United States Railroad Administration is allowed a special per diem reclaim on cars delivered to it, such reclaims shall be paid by the Federal road to which it is assigned, but shall not be in addition to any switching reclaim herein established.

7. When it has been established that a reclaim is due to or from a non-Federal road from or to a Federal road under Per Diem Rule 14, or on account of special conditions, settlement shall be made by the non-Federal roads with the Federal road to which it is assigned.

8. When cars are handled under Per Diem Rule 5 or held under Per Diem Rule 14 by one non-Federal road for another non-Federal road, reclaim settlement shall be made direct between such roads.

[fol. 1063-3] 9.* When per diem earnings of cars of non-Federal ownership cease or are suspended as provided by Per Diem Rules 7 and 8, notices in accordance with these rules shall be transmitted both to the Federal road responsible for settlement with owner and to the owner of the car.

10.* When per diem earnings of any car on a non-Federal road cease or are suspended as provided by Per Diem Rules 7 and 8, notices in accordance with these rules shall be transmitted both to the owner and to its assigned Federal road.

Passenger Cars

11. The rates named in Car Service Rules for use of passenger equipment shall govern.

12. Each non-Federal road shall report and pay to the Federal road to which it is assigned earnings of each railroad-owned passenger car on its line, whether mileage or per diem.

13. Each Federal road shall be responsible for the payment of mileage and per diem on passenger equipment owned by the non-Federal road or roads assigned to it while they are away from home. The non-Federal road shall submit monthly a properly supported statement to the Federal road to which it is assigned, showing all mileage and per diem earnings on its passenger equipment while away from home.

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*Note to Rules 9 and 10.—The names of officers to whom these reports are to be forward should be inserted in each road's registration in the Official Railway Equipment Register.

14. Each Federal road shall make monthly wheelage reports to car owner of non-Federal roads, passenger equipment on its line. Each non-Federal road shall make monthly wheelage reports to car owner for all foreign passenger equipment on its line.

Appendix "C"

Code of Rules Governing Charges for Detention and Use of Freight Cars While in Possession of Industrial Common Carriers

NOTE.—These rules to apply only where a railroad has been found an industrial common carrier.

Rule 1.—Cars Subject to Rules

All cars held by an industrial common carrier are subject to these rules, except as follows:

Cars at home on the tracks of the industrial common carrier or industries located thereon.

Rule 2.—Free Time Allowed

Section A.—Seventy-two (72) hours (3 days) free time will be allowed:

1. On cars delivered loaded and returned empty.

2. On cars delivered empty and returned loaded.

Section B.—One hundred and forty-four (144) hours (6 days) free time will be allowed on cars delivered loaded and returned loaded.

Section C.—Twenty-four (24) hours (1 day) free time will be allowed on cars delivered empty and returned empty.

[fol. 1063-4]

Rule 3.—Computing Time.

Time will be computed from the first 7 a. m. after actual placement on the interchange track until returned to the same or another recognized interchange track; except that when, through no fault of the delivering line, actual placement of a car cannot be made upon the interchange track,

time will be computed from the first 7 a. m. after notice of readiness to deliver such car has been sent or given to the industrial common carrier, such notice to contain point of shipment, car initials and numbers, contents, consignee, and if transferred in transit, the initials and number of the original car.

In computing time, Sundays and legal holidays (National, State or Municipal), but not half-holidays, will be excluded, except as otherwise provided in Section A, paragraph 3 of Rule 4.

Rule 4.—Charges

Section A. 1. On cars subject to Rule 2, Section A, one credit will be allowed for each car returned within the first forty-eight (48) hours of free time; after the expiration of seventy-two (72) hours free time, one debit per car per day, or fraction of a day, will be charged for each of the first four days; in no case shall more than one credit be allowed on any one car and in no case shall more than four credits be applied in cancellation of debits accruing on any one car.

2. On cars subject to Rule 2, Section 8, two credits will be allowed for each car returned within the first ninety-six (96) hours of free time; one credit will be allowed for each car returned within the first one hundred and twenty (120) hours' free time; after the expiration of one hundred and forty-four (144) hours' free time, one debit per car per day or fraction of a day will be charged for each of the first eight days; in no case shall more than two credits be allowed on any one car, and in no case more than eight credits be applied in cancellation of debits accruing on any one car.

3. After a car has accrued the debits named in paragraphs 1 and 2 of this rule, a charge of *$— per car per day will be made for each succeeding day or fraction of a day. After a car has accrued the debits provided in paragraphs 1 or 2, the charges named herein will apply on all subsequent Sundays and legal holidays.

4. At the end of the calendar month the total number of credits will be deducted from the total number of debits,

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*Current demurrage rate.

and *$— per debit will be charged for the remainder. If the credits equal or exceed the debits, no charge will be made and no payment will be made by the carrier line on account of such excess of credits; nor shall the credits in excess of the debits of any one month be considered in computing the average detention for another month.

Section B. On cars subject to Rule 2, Section C, the following charges per car per day or fraction of a day, will be made, after expiration of twenty-four hours' free time; *$— for each of the first four (4) days; and for each succeeding day, *$—.

Chicago, Ill., February 16, 1927.

L.

[fol. 1064]

EX. 501 BEFORE I. C. C. IN DOCKET NO. 17801

List of Subscribers to the Car Service and Per Diem Agreement Having a Mileage of Less than 100 Miles, and Which Are Independently Operated.

Name of road	Average miles operated	Revenue freight cars owned
Aberdeen & Rockfish R. R. Co	44.90	.....
Abilene & Southern Ry. Co	90.79	35
Akron & Barberton Belt R. R. Co	46.17	.....
Algoma Eastern Ry	87.00	293
Alton & Eastern R. R. Co	56.00	.....
Alton & Southern R. R	43.18	.....
Apalachicola Northern R. R. Co	99.12	141
Arcade & Attica R. R. Corp	28.36	14
Arkansas & Louisiana Missouri Ry. Co	85.14	.....
Arkansas Valley Interurban Ry. Co	60.00	7
Ashley, Drew & Northern Ry. Co	40.65	32
Atlanta & St. Andrews Bay Ry. Co	82.00	23
Atlantic & Western R. R. Co	24.00	3
Atlantic Port Ry. Corp	20.57	203
Bamberger Electric R. R. Co	75.00	75
Batesville Southwestern R. R. Co	17.00	3
Beaver Dam R. R. Co. (of Virginia)	1.42	37
Belfast & Moosehead Lake R. R. Co	33.07	.....
Bellefonte Central R. R. Co	19.80	23
Bennettsville & Cheraw R. R. Co	34.00	5
Bingham & Garfield Ry. Co	32.29	216
[fol. 1064-1]		
Birmingham & Southeastern Ry. Co	46.89	.....
Birmingham Belt R. R. Co	34.25	.....
Bonhomie & Hattiesburg Southern R. R. Co.	25.95	.....
Boyne City, Gaylord & Alpena R. R. Co	91.52	211
Buffalo Creek R. R. Co	37.96	.....
Buffalo Creek R. R. Co	.....	.....
Buffalo Creek & Gauley R. R. Co	18.60	918
Burlington, Muscatine & Northwestern Ry.	11.10	.....
Butte, Aneconda & Pacific Ry	72.00	1,429
California Western R. R. & Nav. Co	42.85	178

*Current demurrage rate.

Name of road	Average miles operated	Revenue freight cars owned
Cambria & Indiana R. R. Co.	37.65	3,475
Canton R. R. Co.	32.78	21
Cedar Rapids & Iowa City Ry.	44.00	10
Central California Traction Co.	53.00	35
Charles City Western Ry.	26.00	1
Chattahoochee Valley Ry. Co.	43.63	2
Chesapeake Beach Ry. Co.	28.32	.....
Chesapeake Western Ry.	40.57	.....
Chesapeake & Western R. R. Co.	.....	.....
Chicago & Illinois Midland Ry. Co.	30.85	1,245
Chicago, Aurora & Elgin R. R. Co.	66.00	37
Chicago, Harvard & Geneva Lake Ry. Co.	13.00	33
Chicago Heights Terminal Transfer R. R.	22.07	.....
Chicago, South Shore & South Bend R. R.	77.00	29
[fol. 1064–2]		
Chicago, Springfield & St. Louis Ry. Co.	78.78	.....
Chicago, West Pullman & Southern R. R. Co.	35.89	36
Chihuahua & Oriente Ry. Co.	76.00	.....
Cincinnati, Georgetown & Portsmouth R. R. Co.	53.70	.....
Cincinnati, Hamilton & Dayton Ry. Co.	59.00	47
Clinton & Oklahoma Western R. R. Co.	60.25	33
Clinton, Davenport & Muscatine Ry. Co.	66.00	517
Colorado & Wyoming Ry. Co.	41.85	511
Columbia, Newberry & Laurens R. R. Co.	75.00	56
Conemaugh & Black Lick R. R. Co.	42.00	15
Cornwall R. R. Co.	12.67	141
Coudersport & Port Allegany R. R. Co.	39.00	71
Cumberland & Pennsylvania R. R. Co.	56.83	1,530
Cumberland Co.'s R. R.	.....	.....
Cuyahoga Valley Ry. Co.	8.79	.....
Dardanelle & Russellville R. R. Co.	5.00	10
Davenport, Rock Island & North Western Ry. Co.	49.00	40
Deering Southwestern Ry.	32.00	88
Delaware & Northern R. R. Co.	45.75	47
Delray Connecting R. R. Co.	27.35	278
Denison, Bonham & New Orleans R. R. Co.	24.15	.....
Denver & Inter-Mountain R. R. Co.	56.68	164
DeQueen & Eastern R. R. Co.	36.10	16
Des Moines & Central Iowa R. R.	75.00	176
Des Moines Union Ry. Co.	32.83	18
Des Moines Western Ry. Co.	5.20	.....
[fol. 1064–3]		
Detroit & Toledo Shore Line R. R. Co.	61.75	394
Doniphan, Kensett & Searcy Ry.	6.00	.....
Duluth & Northeastern R. R. Co.	61.75	345
Durham & Southern Ry. Co.	58.97	6
East Carolina Ry.	39.20	11
East Erie Commercial R. R.	9.14	.....
East Jersey R. R. & Terminal Co.	1.98	669
East Jordan & Southern R. R. Co.	49.55	.....
Eastland, Wichita Falls & Gulf R. R. Co.	27.83	.....
East St. Louis & Suburban Ry. Co.	14.00	324
East St. Louis, Columbia & Waterloo Ry.	22.19	3
East St. Louis Junction R. R. Co.	41.86	290
East Tennessee & Western North Carolina R. R. Co.	36.18	207
Eastern British Columbia Ry. Co.	14.00	29

Name of road	Average miles operated	Revenue freight cars owned
Eastern Kentucky Ry. Co.	36.08	41
Eastern New York Utilities Corp.	37.20	7
El Paso Southern Ry. Co.	43.31	.....
Erie & Michigan Ry. & Nav. Co.	10.92	109
Escanaba & Lake Superior R. R. Co.	75.72	403
Essex Terminal Ry.	21.00	6
Evansville & Ohio Valley Ry. Co.	91.00	134
Evansville Surburban & Newburgh Ry. Co.	25.00	203
Fairport, Painesville & Eastern R. R. Co.	4.56	152
Fernwood, Columbia & Gulf R. R. Co.	44.41	60
[fol. 1064–4]		
Fonda, Johnstown & Gloversville	88.77	10
Gloversville & Broadalbin R. R. Co.	.....	.....
Johnstown, Gloversville, Kingsboro Horse R. R. Co.	.....	.....
Fort Smith, Subiaco & Rock Island R. R. Co.	39.82	.....
Fort Worth Belt Ry. Co.	18.06	.....
Frankfort & Cincinnati Ry. Co.	40.80	.....
Franklin & Pittsylvania Ry. Co.	29.95	7
Fredericksburg & Northern Ry. Co.	23.90	.....
Gainesville & Northwestern R. R. Co.	37.13	3
Gainesville Midland Ry.	74.00	22
Galveston, Houston & Henderson R. R. Co.	50.00	.....
Garden City Western Ry. Co.	13.94	30
Garyville Northern R. R. Co.	35.00	.....
Georgia, Ashburn, Sylvester & Camilla Ry. Co.	49.98	.....
Georgia Northern Ry. Co.	67.78	58
Georgia Southwestern & Gulf R. R. Co.	36.03	12
Albany Street Ry. Co.	.....	.....
Albany & Northern Ry. Co.	.....	.....
Grafton & Upton R. R. Co.	15.37	6
Grand River Ry. Co.	21.00	.....
Graysonia, Nashville & Ashdown R. R. Co.	41.50	109
Great Western Ry. Co.	86.74	168
Groveton, Lufkin & Northern Ry. Co.	78.00	100
Hagerstown & Frederick Ry.	87.00	56
Hampton & Branchville R. R. Co.	24.00	.....
High Point, Thomasville & Denton R. R. Co.	34.81	6
Hoboken Manufacturers' R. R. Co.	11.06	.....
Hoboken R. R Warehouse & Steamship Connecting Co.	.....	.....
[fol. 1064–5]		
Hoosac Tunnel & Wilmington R. R. Co.	24.00	.....
Huntingdon & Broad Top Mountain R. R. & Coal Co.	74.11	699
Illinois Terminal Co.	22.45	47
Indiana Northern Ry. Co.	1.60	.....
Indianapolis Union Ry. Co.	77.80	.....
Belt R. R. & Stock Yards Co.	.....	.....
Interstate R. R. Co.	65.65	6,355
Iowa Southern Utilities Co.	32.00	10
Ironton R. R. Co.	35.88	12
Jacksonville & Havana R. R. Co.	41.75	2
Jamestown, Westfield & Northwestern R. R. Co.	33.00	7
Johnstown & Stony Creek R. R. Co.	4.68	1
Joplin & Pittsburg Ry. Co.	96.00	60
Kanawha, Glen Jean & Eastern R. R. Co.	15.37	206
Kansas & Missouri Ry. & Terminal Ry.	5.00	.....

Name of road	Average miles operated	Revenue freight cars owned
Kansas & Oklahoma Ry. Co.	19.02	.....
Kansas & Sidell R. R. Co.	26.19	.....
Kansas City, Clay County & St. Joseph Ry. Co.	77.61	28
Kansas City, Kaw Valley & Western Ry. Co.	35.00	22
Kentucky & Indiana Terminal R. R. Co.	89.77	.....
Kishacoquillas Valley R. R. Co.	9.50	.....
Lackawanna & Wyoming Valley R. R. Co.	23.00	33
Lake Erie & Northern Ry. Co.	51.00	27
Lake Erie, Franklin & Clarion R. R. Co.	36.37	183
Lake Terminal R. R. Co.	42.48	1
Lancaster & Chester Ry. Co.	29.00	25
[fol. 1064–6]		
LaSalle & Bureau County R. R. Co.	11.02	.....
Laurinburg & Southern R. R. Co.	30.00	25
Leavenworth & Topeka R. R. Co.	46.50	1
Lehigh & Hudson River Ry. Co.	96.60	428
Ligonier Valley R. R. Co.	16.00	.....
Lima Toledo R. R. Co.	72.00	20
Litchfield & Madison Ry. Co.	43.97	1,151
Little River R. R. Co.	8.00	30
Live Oak, Perry & Gulf R. R. Co.	89.19	81
London & Port Stanley Ry.	25.00	14
Los Angeles Junction Ry.	13.85	2
Louisiana & North West R. R. Co.	99.20	24
Louisiana Southern Ry. Co.	60.76	.....
McCloud River R. R. Co.	47.03	99
Magma Arizona R. R. Co.	28.11	15
Manufacturers Ry. Co.	30.95	614
Mariana & Blounstown R. R. Co.	43.56	8
Marion & Rye Valley Ry. Co.	17.70	36
Maryland & Pennsylvania R. R. Co.	80.69	132
Maryland & Pennsylvania Terminal Ry. Co.	.....	.....
York Terminal Ry. Co.	.....	.....
Mason City & Clear Lake R. R. Co.	21.00	.....
Mexican Northern Ry. Co.	88.00	.....
Mexican Pacific R. R. Co. Inc.	59.43	92
Meridian & Bibgee River Ry.	30.00	.....
Miami Mineral Belt R. R. Co.	11.04	73
Middletown & Unionville R. R. Co.	14.30	2
Midland Continental R. R.	68.62	16
[fol. 1064–7]		
Midland Terminal Ry. Co.	58.21	264
Minatitlan R. R.	8.07	.....
Minneapolis, Northfield & Southern Ry.	70.81	52
Minneapolis, Red Lake & Manitoba Ry. Co.	33.50	56
Minnesota, Dakota & Western Ry. Co.	53.14	474
Minnesota Western R. R. Co.	83.80	166
Mississippi Export R. R. Co.	42.00	24
Mississippi River & Bonne Terre Ry.	63.89	693
Mississippi Southern R. R.	66.16	73
Missouri Southern R. R. Co.	54.22	10
Modesto & Empire Traction Co.	5.20	.....
Modesto Interurban Ry.	.....	.....
Monongahela Connecting R. R. Co.	42.55	571
Montana, Wyoming & Southern R. R. Co.	27.06	148
Montour R. R. Co.	57.35	2,483
Montpelier & Wells River R. R.	44.78	296
Barre & Chelsea R. R. Co.	21.76	.....

Name of road	Average miles operated	Revenue freight cars owned
Morriessey, Fernie & Michel Ry.	5.00	.....
Muncie & Western R. R. Co.	4.18	39
Municipal Docks & Terminals	7.00	.....
Natchez, Columbia & Mobile R. R. Co.	29.42	119
Nevada Copper Belt R. R. Co.	40.64	16
Newburgh & South Shore Ry. Co.	85.13	1,047
American Steel & Wire Co.'s R. R.	.....	.....
New Orleans, Natalbany & Natchez Ry. Co.	28.22	155
New Orleans Public Belt R. R.	83.64	34
Niagara Junction Ry. Co.	20.04	.....
Norfolk & Portsmouth Belt Line R. R. Co.	72.02	.....
[fol. 1064–8]		
North & South Ry. Co.	11.07	2
Northeast Oklahoma R. R. Co.	49.00	92
Norwood & St. Lawrence R. R. Co.	18.02	84
Ohio Public Service Co.	49.59	7
Oklahoma Ry. Co.	78.00	10
Oklahoma-Southwestern Ry. Co.	23.85	5
Oklahoma Union Ry. Co.	19.36	1
Olean, Bradford & Salamanca Ry. Co.	90.06	.....
Osage Ry. Co.	20.54	.....
Oshawa Ry. Co.	17.35	1
Pacific & Idaho Northern Ry. Co.	89.90	26
Pacific Coast R. R. Co.	53.60	496
Paris & Mount Pleasant R. R. Co.	51.43	12
Patapsco & Back Rivers R. R. Co.	58.70	.....
Penn Yan & Lake Shore	9.00	.....
Peoria, Hanna City & Western Ry. Co.	5.65	.....
Petaluma & Santa Rosa R. R. Co.	43.00	.....
Philadelphia, Bethlehem & New England R. R. Co.	72.84	.....
Pittsburgh & West Virginia Ry. Co.	92.34	5,587
West Side Belt R. R. Co.	.....	.....
Pittsburgh, Chartiers & Youghiogheny Ry. Co.	21.96	29
Pittsburgh, Lisbon & Western R. R. Co.	23.30	11
Port Huron & Detroit R. R. Co.	19.08	.....
Portland Electric Power Co.	81.50	431
Port Utilities Commission of Charleston, S. C.	13.64	.....
[fol. 1064–9]		
Prattsburg Ry. Corp.	11.44	.....
Quebec Ry. Light & Power Co.	33.00	144
Rayway Valley Co.	12.45	.....
Rayway Valley R. R. Co.	.....	.....
Rapid City, Black Hills & Western R. R. Co.	33.50	7
Rapid R. R. Co.	68.00	.....
Raritan River R. R. Co.	23.20	50
Rio Grande & Eagle Pass Ry. Co.	26.89	126
River Terminal Ry. Co.	13.24	111
Roberval-Saguenay Ry. Co.	42.5	190
Rockingham R. R. Co.	22.02	.....
Rock Island Southern Ry. Co.	35.33	145
Galesburg & Western R. R. Co.	.....	.....
Roscoe, Snyder & Pacific Ry. Co.	49.77	.....
Saint Joseph Belt Ry. Co.	25.51	.....
Saint Joseph Terminal R. R. Co.	15.03	.....
Saint Louis & Belleville Electric Ry. Co.	14.00	506
Saint Louis & O'Fallon Ry. Co.	8.94	574

Name of road	Average miles operated	Revenue freight cars owned
Saint Louis, Troy & Eastern R. R. Co	25.91	1,080
Saint Louis & Illinois Belt Ry	.....	.....
Salt Lake & Utah R. R. Co	75.6	114
Sandersville R. R. Co	3.90	.....
San Luis Southern Ry. Co	31.38	.....
Sibley, Lake Bisteneau & Southern Ry. Co.	27.87	.....
Sierra Ry. Co. of California	76.11	49
Sioux City Terminal Ry. Co	18.47	.....
South Brooklyn Ry. Co	18.60	133
[fol. 1064–10]		
Southern New York Ry. Inc	66.00	18
Southern Ohio Public Service Co	66.00	.....
South Georgia Ry. Co	81.60	12
South Omaha Terminal Ry. Co	35.05	9
Southwest Missouri R. R. Co	94.00	.....
Steelton & Highspire R. R. Co	42.00	.....
Stewartstown R. R. Co	16.20	3
Susquehanna & New York R. R. Co	67.72	130
Susquehanna River & Western R. R. Co	33.71	1
Tennessee, Alabama & Georgia Ry	94.59	90
Terminal Railway–Alabama State Dock	32.80	24
Texas, Oklahoma & Eastern R. R. Co	39.75	23
Texas Pacific–Missouri–Pacific Terminal R. R. Co	75.12	.....
New Orleans	.....	.....
Texas Short Line Ry. Co	10.04	22
Texas South-Eastern R. R. Co	20.91	7
Thousand Island Ry. Co	6.33	1
Toledo & Indiana R. R. Co	56.00	12
Toledo & Western Ry. Co	75.00	9
Toledo, Angola & Western Ry. Co	10.50	5
Toledo Terminal R. R. Co	77.09	19
Tremont & Gulf Ry. Co	72.75	315
Tuckerton R. R. Co	29.00	.....
Union Ry. Co	84.57	.....
Iron Mt. R. R. of Memphis	.....	.....
Union Terminal Co	16.64	.....
Union Traction Co	77.00	26
Union Transportation Co	24.37	.....
[fol. 1064-11]		
Unity Rys. Co	3.70	.....
Upper Merion & Plymouth R. R	6.57	39
Virginia & Carolina Southern R. R	52.94	1
Virginia & Truckee Ry	67.48	21
Virginia Central Ry	38.00	18
Wabash, Chester & Western R. R	64.83	11
Washington & Old Dominion Ry	89.00	10
Washington, Idaho & Montana Ry	49.37	309
Western Allegheny R. R	47.89	23
Wharton & Northern R. R	21.81	46
Wilkes-Barre & Hazelton Ry	30.10	14
Williamsport & North Branch Ry	46.00	6
Windsor, Essex & Lake Shore Rapid Ry	37.00	.....
Winston-Salem Southbound Ry	94.52	166
Wisconsin & Michigan R. R	75.70	162
Woodstock Ry	13.88	3
Yosemite Valley R. R	79.17	252
Total	11,912.13	42,627

Chicago, Ill.,
March 15, 1928.
J.

[fol. 1065] Ex. 502 Before I. C. C. in Docket No. 17801

Corrected Exhibit No. 12

Present Method of Settlement for the Use and Detention of Freight Cars by Steam Railroads Who do not Subscribe to the Car Service and Per Diem Agreement

Summary

(A) 144 Roads not industrially owned or controlled settle with their direct connections at the established per diam rate without free time or reclaim.

(B) 52 Roads industrially owned or controlled settle with their direct connections at the established per diem rate without free time or reclaim.

(C) 18 Roads not industrially owned or controlled settle with their direct connections at the established per diem rate with free time or reclaim.

(D) 29 Roads industrially owned or controlled settle with their direct connections at the established per diem rate with free time or reclaim.

(E) 18 Roads not industrially owned or controlled settle with their direct connections upon a demurrage basis with 2 days' free time.

(F) 34 Roads industrially owned or controlled settle with their direct connections upon a demurrage basis with 2 days' free time.

(G) 41 Roads industrially owned or controlled make settlement in accordance with the so-called Birmingham Southern rules.

(H) 5 Roads not industrially owned or controlled do not make any settlement. The direct connections retain the demurrage collected from shippers or consignees.

(I) 43 Roads industrially owned or controlled are treated by their direct connections as plant facilities. Demurrage is charged against shippers and consignees by the direct connections.

[fol. 1065-1] (A)

List of 144 Steam Railroads (Not Industrially Owned or Controlled) Who Do Not Subscribe to the Per Diem Agreement but Make Settlement with their Direct Connections at the Per Diem Rate Without Reclaim or Free Time:

Name of Railroads

Alabama Central R. R.
Alabama Central Ry.
Alabama & Northwestern R. R.
Alabama & Western Florida R. R.
Alcolu R. R.
Alabama, Florida & Gulf R. R.
Amador Central R. R.
Apache Ry.
Arkansas Western Ry.
Aransas Harbor Terminal Ry.
Asherton & Gulf Ry.
Ashland Ry.
Atlantic & Carolina R. R.
Atlantic Northern Ry.
Augusta R. R.
Augusta Northern Ry.
Bamberg, Ehrhardt & Walterboro Ry.
Bartlett & Western R. R.
Beaver, Meade & Englewood R. R.
Birmingham, Columbus & St. Andrews R. R.
Birmingham, Selma & Mobile
Black Mountain R. R.
Bloomsburg & Sullivan R. R.
Bonlee & Western Ry.
Bowdon Ry.
Bristol R. R.
Brookville & Ohio R. R.
Cairo, Truman & Southern R. R.
Camino, Placerville & Lake Tahoe R. R.
Carolina Southern Ry.
Caro Northern Ry.
Cassville & Exeter Ry.
Cazenovia & Southern R. R.
Central West Va. & Sou. R. R.
Chaffee R. R.
Charlotte, Monroe & Columbia
Crystal River & San Juan R. R.
Cisco & Northeastern Ry.
Coal Fields Ry.
Collins & Glenville R. R.
Dansville & Mt. Morris R. R.
Deep Creek R. R.
DeKalb & Western R. R.
Delaware Valley Ry.
Detroit Terminal R. R.
East Berlin R. R.
Eldorado & Wesson Ry.

[fol. 1065-2]

Elkin & Allegheny R. R.
Emmitsburg R. R.
Euclid R. R.
Fellsmere R. R.
Flint River & Northeastern R. R. (by A. C. L.)
Florida Central & Gulf
Glenfield & Western Ry.
Graham County R. R
Gulf & Northern Ry.
Hickory Valley R. R.
Hillsboro & Northeastern Ry.
Inter-California Ry.
Jefferson & Southwestern R. R.
Kinston-Carolina R. R
Kosciusko & Southeastern R. R.
LaGrosse & Southeastern Ry.
Lima & Defiance R. R.
Lowville & Beaver River Ry.
Lufkin, Hemphill & Gulf
Manilla & Southwestern Ry.
Marcellus & Otisco
Marinette, Tomahawk & Western R.R.
Marion Ry. Corp.
Maryland & Delaware Coast R. R.
Maxton, Alma & Southbound R. R.
Middleburg & Schoharie R. R.
Milltown Air Line R. R.
Mississippian Ry.
Mississippi & Alabama R. R.
Mississippi & Western Ry.
Missouri, Illinois Bridge & Belt R. R.
Mobile & Gulf Ry.
Moore Central Ry.
Morgan & Fentress Ry.
Mt. Jewett, Kinzua & Riterville R. R.
Narragansett Pier R. R.
Neamé, Carson & Southern R. R.
New York & Pennsylvania R. R.
North Louisiana & Gulf R. R.
Norton & Northern R. R.
Okmulgee Northern Ry.
Ontanagon R. R.
Oregon-California & Eastern Ry.
Ozark Southern Ry.
Pearl River Valley R. R.
Peninsular Ry.
Pigeon River Ry.
Pine Bluff & Northern Ry.
Pittsburgh & Susquehanna R. R.

[fol. 1065-3]

Port Bolivar Iron Ore R. R.
Poteau & Cavanal Mt. R. R.
Quakerstown & Bethlehem R. R.
Richmond Belt Ry.
Rio Grande Ry.
Rochester & Eastern
Rockcastle River Ry.
Rockdale, Sandow & Southern R. R.
St. John & Ophir R. R.
St. Mary's
Salem, Winona & Southern R. R.
San Benito & Rio Grande Valley Ry.
Sand Springs Ry.
San Luis Central
San Joaquin & Eastern R. R.

Name of Railroads

Schoharie Valley R. R.
Sharpsville R. R.
Shearwood Ry.
Skaneateles Ry.
Statenville Ry.
Statesboro Northern Ry.
Stockton Terminal & Eastern R. R.
Stone Harbor Terminal R. R.
Sumter & Choctaw Ry.
Suncook Valley R. R.
Susquehanna & New York R. R.
Talbotton R. R.
Tennessee R. R.
Tennessee, Kentucky & Northern R.R.
Timpson & Henderson Ry.
Townsville R. R.
Traverse City, Leelanau, Manistique R. R.
Trinity Valley & Northern Ry.
Tucson, Cornelia & Gila Bend R. R.
Tuskegee R. R.
Union Point & White Plains R. R.
Uvalde & Northern Ry.
Virginia Blue Ridge
Warrenton R. R.
Warrior River Terminal
Washington, Brandywine & Pt. Lookout R. R.
Washington & Lincolnton R. R.
West Virginia Midland Ry.
Wildwood & Delaware Bay Short Line
Wilmington, Brunswick & Southern R. R.
Wood River Branch R. R.
Yreka R. R.
Yuma Valley R. R.

(B)

[fol. 1065–4]

List of 52 Industrially Owned or Controlled Steam Railroads, Who Do Not Subscribe to the Car Service and Per Diem Agreement but Make Settlement with their Direct Connections at the Per Diem Rate Without Free Time or Reclaim:

Name of Road	Name of Owner
Angelina & Neches River R. R.	Angelina County Lbr. Co.
Arizona Southern R. R.	Am. Smelting & Refining Co.
Big Sandy & Cumberland R. R.	Ritter Lbr. Co.
Big Sandy & Kentucky River R. R.	Dawkins Lbr. Co.
Brimstone R. R. & Canal Co.	Union Sulphur Co.
Buffalo-Union Carolina R. R.	Union-Buffalo Mills Co.
California, Shasta & Eastern Ry.	R. R. Lbr. Co.
Carbon County Ry.	Col. Steel Corp.
Clarendon & Pittsford R. R.	Vermont Marble Co.
Dover & Southbound R. R.	Goldsboro Lbr. Co.
East Broad Top R. R. & Coal Co.	Rockhill Iron & Coal Co.
East Texas & Gulf Ry.	Lodwick Lbr. Co.
Edgemoor & Manetta Ry.	Manetta Cotton Mills
Gideon & North Island R. R.	Gideon Anderson Lbr. Co.
Greene County R. R.	Bostwick Mfg. Co.
Gulf & Sabine River R. R.	Gulf Lbr. Co.
Hardwick & Woodbury R. R.	Woodbury Granite Co.
Indian Valley R. R.	Engels Copper Mining Co.
Intermountain Ry.	Boise Payette Lbr. Co.
Jefferson & Northwestern Ry.	Clark & Boice Lbr. Co.
[fol. 1065–5]	
Kanawha Central Ry.	Olcott Coal & Iron Co.
Kane & Elk R. R.	James Bros.
Kelleys Creek Ry.	Dunday Creek Co.
Kelleys Creek & Northwestern Ry.	Kelleys Creek Co.
Kentucky & Tennessee Ry.	Stearns Coal Co.
Knox R. R.	Knox Lime Co.
Lake Champlain & Moriah R. R.	Weatherby-Sherman Co. & Port Henry Iron Ore Co.
Leesville, Slagle & Eastern Ry.	White-Grandin Lbr. Co.
Marshall, Elysian Fields & Southeastern Ry.	J. M. Furr's Sons
Mineral Point & Northern Ry.	Mineral Point Zinc Co.
Mississippi Eastern Ry.	Long Bell Lbr. Co.
Morehead & North Fork R. R.	Clearfield Lbr. Co.
Moscow, Camden & San Augustine R. R.	W. T. Carter & Bro. Lbr. Co.
Nashville & Atlantic R. R.	I. R. R. Coal & Lbr. Co.
Pickens R. R.	Appalachian Lbr. Co.
Quincy R. R.	F. S. M. Lbr. Co.
Ray & Gila Valley R. R.	Ray Cons. Copper Co.
Robey & Northern R. R.	A. P. S. Co.
St. Louis & Ohio River R. R.	Aluminum Co. of America
Sacramento Valley & Eastern Ry.	Bully Hill Copper Co.
[fol. 1065–6]	
Santa Maria Valley R. R.	La Brea Co.
Sheffield & Tionesta Valley Ry.	Central Leather Co.
Sligo & Eastern R. R.	Sligo Furnace Co.
Smithonia & Dunlap R. R.	Jas. M. Smith
South Manchester R. R.	Cheney Bros.
Sterling Mountain Ry.	Sterling Iron & Coal Co.
Tooele Valley Ry.	International Smelting & Ref. Co.
Trinity Valley Southern Ry.	Oakhurst Lbr. Co.
Ventura County R. R.	Am. Beet Sugar Co.
Waycross & Southern R. R.	Hebard C. Co.
Winfield R. R.	Winfield Sand Co.
Winifrede R. R.	Winifrede Coal Co.

[fol. 1065–7] (C)

List of 28 Steam Railroads (Not Industrially Owned or Controlled) Who Do Not Subscribe to the Car Service and Per Diem Agreement but Settle with their Direct Connections at the Per Diem Rate with Free Time or Reclaim.

Name of Road	Trunk-Line Connections	Free Time or Reclaim Allowed
Arkansas R. R.	M. P.	Actual time with Max. 3 days.
Artemus-Jellico R. R.	L. & N.	Demurrage basis on L. & N. cars only.
Cadiz R. R.	I. C.—L. & N.	Pays L. & N. per diem on foreign cars, demurrage on L. & N. cars. Pays I. C. demurrage on all cars.
Carrollton & Worthville R. R.	L. & N.	Demurrage basis on L. & N. cars only.
Cape Girardeau Northern Ry.	St. L. S. F.	3 days on switch cars, only in accordance with order Mo. Public Service Com.
Ettrick & Northern Ry.	G. B. & W.	2 days G. B. & W. cars only.
Flemingsburg & Northern R. R.	L. & N.	Demurrage basis on L. & N. cars only.
Federal Valley R. R.	N. Y. C. R. R.	Actual time on coal cars in accordance with decision of I. C. C.
Kentucky, Rock Castle & Cumberland R. R.	L. & N.	Demurrage basis on L. & N. cars only.
Manchester & Oneida Ry.	C. G. W.—C. M. & St. P.	2 days.
Morristown & Erie R. R.	D. L. & W.—Erie	3 days in accordance with order Public Utilities Com. of N. J.
Minneapolis Eastern Ry.	C. B. & Q.—C. M. & St. P.—C. R. I. & P.—C. St. P. M. & O.—G. N.—N. P.	
Port Angeles & Western Ry.	C. M. & St. P.	Actual.
Railway Transfer of Mpls.	C. B. & Q.—C. G. W.—C. M. & St. P.—C. R. I. & P.—C. St. P. M. & O.—G. N.—N. P.—M. & St. L.—Soo Line	Actual. Max. 5 days.
South San Francisco Belt Ry.	So. Pac.	Actual.
Tabor & Northern Ry.	C. B. & Q.—Wab.	3 days.
Unadilla Valley Ry.	D. L. & W.—N. Y. O. & W.	2 days.
Waterville Ry.	G. N.	2 days by N. Y. O. & W.; 2.25 days by D. L. & W.
		3 days for Single Loads; 6 days for Double Loads.

(D)

[fol. 1065–8]

List of 29 Industrially Owned or Controlled Steam Railroads Who Do Not Subscribe to the Car Service and Per Diem Agreement but Settle with their Direct Connections at the Per Diem Rate with Free Time or Reclaim

Name of Road	Trunk-Line Connections	Name of Owner	Free Time Allowed
*Arcadia & Betsey River	P. M.	Arcadia Furn. Co.	4 days P. M. cars; 3 days Foreign cars.
Blytheville, Leachville & Ark. Sou. R. R.	St. L. S. F.—St. L. S. W.	Chgo. Mill & Lbr. Co.	Reclaim on Switch Cars.
Carolina & Northeastern R. R.	S. A. L.	Lbr. Co.	2 days logs; 1 day other cars.
Chicago & Calumet River R. R.	B. & O. C. T.—C. I. & L.—E. J. & E.—Erie—I. H. B.—N. Y. C. & St. L.—Pa.—Wab.	West Steel Car & Fdry. Co.	4 days.
Christie & Eastern Ry.	C. R. I. & P.—K. C. S.—M. P. S. P.—T. & P.	Peavy Burnes Lbr. Co.	Actual time on cars stored for prospective loading.
Colorado & Southeastern Ry.	A. T. & S. F.—C. & S.—D. & R. G. W.	Victor Am. Fuel Co.	3 days single loads; 4 days double loads.
Colorado-Kansas Ry.	A. T. S. F.—C. & S.—C. R. I. & P.—D. & R. G. W.—M. P.	Colo. Fuel & Iron Co.	2 days.
Greenville & Northern Ry.	C. & W. C.—P. & N.—Sou.	Saluda Land & Lbr. Co.	C. & W. C. and So. Ry. charge straight per diem without reclaim. P. & N. charge straight per diem but allow reclaim on switch cars.
Hartford & Eastern Ry.	N. P.	Rucker Bros.	2 days.
Hill City Ry. Co.	G. N.	Armour & Co.	3 days single loads; 5 days double loads.
Longview, Portland & Nor. R. R.	G. N. N. P.—U. P.	Long Bell Lbr. Co.	4 days single loads; 6 days double loads.
Montana R. R.	M. P.	Clarksville Coal Co.	Actual time with Max. 3 days on coal cars, except "No Bill" cars allowed actual time without max.
Mount Hope Mineral R. R.	C. R. R. N. J.—D. L. & W.	Thomas Iron Co.	2 days.
Nacogdoches & Southeastern R. R.	G. C. S. F.—H. E. & W. T.—T. & N. O.	Frost Johnson Lbr. Co.	3 days switch cars.
Newaukum Valley R. R.	G. N.—N. P.—U. P.	Carlisle Lbr. Co.	Actual—Max. 4 days.

[fol. 1065-9]

Name of Road	Trunk-Line Connections	Name of Owner	Free Time Allowed
New Mexico Midland Ry.	A. T. S. F.	Carthage Fuel Co.	2 days.
Ohio & Kentucky Ry.	L. & N.	Ky. Block Cannel Coal Co.	Per diem foreign cars, demurrage L. & N. cars.
Preston R. R.	B. & O.	Stanley Coal Co.	3 days switch cars only.
Red River & Gulf R. R.	C. R. I. & P.—M. P.—S. P.—T. & P.	Crowell & Spencer Lbr. Co.	C. R. I. & P. and M. P. charge straight per diem without Free time; So. Pac. and T. & P. allow actual time on cars stored for prospective loading.
Reynoldsville & Falls Creek R. R.	B. R. & P.—P. R. R.	Jefferson & Clearfield Coal & Iron Co.	B. R. & P. allow 3 days; P. R. R. settle on Demurrage plant facility basis.
Rio Grande Eastern Ry.	A. T. & S. F.	Stark Mining Co.	2 days.
Santa-Fe Northwestern Ry.	A. T. S. F.	White Pine Lbr. Co.	2 days on switch cars.
St. Paul Bridge & Terminal Ry.	C. B. Q.—C. G. W.—C. M. & St. P.—C. R. I. & P.—C. & N. W.—S. N. M. St. L.—M. M. P.—Soo Line	Swift & Co.	Actual—Maximum 8 days, except on Stock cars reclaim without Max.
Tennessee & Nor. Carolina Ry.	So. Ry.	Boice Hardwood Lbr. Co.	Reclaim allowed on switch cars.
Ursina & North Fork Ry.	B. & O.	Huff Coal Co.	Actual time coal cars.
Verde Tunnel & Smelter R. R.	A. T. S. F.	United Verde Copper Co.	Actual maximum 5 days on switch cars only.
Washington Western Ry.	C. M. & St. P.—G. N.—N. P.	Three Lakes Lbr. Co.	4 days—No per diem on empty cars stored for prospective loading.
Washington Run R. R.	B. & O.	Wash. Coal & Coke Co.	Actual time coal cars.
West Va. Northern R. R.	B. & O.	Atlantic Coal & Coke	Actual time coal cars.

(E)

[fol. 1065-10]

List of 18 Steam Railroads (Not Industrially Owned or Controlled) Who Do Not Subscribe to the Car Service and Per Diem Agreement but Make Settlement with their Direct Connections upon a Demurrage Basis with 2 Days' Free Time Allowed.

Name of Road	Trunk Line Connections
Central R. R. of Oregon	U. P.
City of Prineville Ry.	U. P.-S. P. & S.
Detroit, Caro & Sandusky Ry.	G. T. W.-M. C.-P. M.
Due West R. R.	Sou.-P. & N.
Ferdinand R. R.	Sou.
Galesburg & Great Eastern R. R.	C. B. & Q.
Great Southern R. R.	U. P.
Hooppole, Yorktown & Tampico R. R.	C. B. & Q.
Howard Terminal Ry.	S. P.-W. P.
Illinois Midland Ry.	C. B. & Q.
Louisville, New Albany & Corydon R. R.	Sou.
Macomb, Industry & Littleton Ry.	C. B. & Q.
*Medford Coast Ry.	S. P.
Minneapolis & Rainy River Ry.	G. N.
Murfreesboro, Nashville & Southwestern Ry.	G. N. & A.-M. P. P. & N.
Rockport, Langdon & Northern Ry.	C. B. & Q.
Shelby County R. R.	C. B. & Q.
Wyoming Ry.	C. B. & Q.

[fol. 1065–11]

(F)

List of 34 Industrially Owned or Controlled Steam Railroads Who Do Not Subscribe to the Car Service and Per Diem Agreement but make Settlement with their Direct Connections upon a Demurrage Basis with 2 Days' Free Time Allowed

Name of Road	Trunk Line Connections	Name of Owner
Aliquippa & Southern R. R.	P. & L. E.	Jones & Laughlin Steel Co.
Appalachian Ry.	Sou. Ry.	Whitmer-Parsons Pulp & Lbr. Co.
Bay Point & Clayton R. R.	A. T. S. F.–S. P.–S. F. S.	Cowell Portland Cement Co.
Brookings & Peach Orchard R. R.	M. P.	Henry Quellmals Lbr. & Mfg. Co.
California Central R. R.	S. P.	Pacific Portland Cement Co.
Cement, Tolenas & Tidewater R. R.	S. P.	Pacific Portland Cement Co.
Cimarron & Northwestern Ry.	A. T. S. F.	Con. I. & Lbr. Co.
Cliffside R. R.	S. A. L.	Cliffside Mfg. Co.
*Emery & Nelson R. R.	G. N.	Emery & Nelson, Inc.
xFore River Railroad	N. Y. N. H. & H.	Bethlehem Steel Co.
Hanover Ry.	C. G. W.	Hanover Woolen Mfg. Co.
Helena & Southwestern Ry.	M. P.	Chicago Mill & Lbr. Co.
Hutchison & Northern Ry.	A. T. S. F.–Ark. Valley–C. R. I. & P.–M. P.	Carey Salt Co.
Lake Providence, Texarkana & Western R. R.	M. P.	E. Sondheimer Co.
L'Anguille River Ry.	M. P.	L'Anguille Lbr. Co.
Lime Rock R. R.	Me. Cent.	Rockland-Rockport Lime Co.
Ludington & Northern R. R.	P. M.	Stearns Salt & Lbr. Co.
*Malvern & Fresco Valley Ry.	C. R. I. & P.–M. P.	Wis. & Ark. Lbr. Co.
Mansfield Ry. & Transp. Co.	K. C. S. & T. & P.	Frost Johnson Lbr. Co.
Mascot & Western R. R.	So. Pac.	Mascot Copper Co.

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Minarets & Western Ry.	So. Pac.	Sugar Pine Lbr. Co.
Mt. Hood R. R.	U. P.	Oregon Lbr. Co.
Natchez, Urania & Ruston R. R.	M. P.	Urania Lbr. Co.
Nelson & Albemarle Ry.	C. & O.–Sou.	Va. Alberina Corp.
Oregon Pacific & Eastern Ry.	So. Pac.	Anderson & Middleton Lbr. Co.
Reader R. R.	M. P.	Mansfield Hardwood Lbr. Co.
Sardis & Delta R. R.	I. C.	Carrier Lbr. Co.
Shreveport Houston & Gulf R. R.	St. L. S. W.–T. & No.	Carter-Kelley Lbr. Co.
Springfield Terminal Ry. (Ill.)	C. & A.–I. C.–Wab.	Jones & Adams Coal Co.

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Name of Road	Trunk Line Connections	Name of Owner
Sumpter Valley Ry.	U. P.	Oregon Lbr. Co.
Trona Ry. Co.	S. P.	Am. Potash & Chemical Co.
Tuckasegee & Southeastern Ry.	So. Ry.	Blackwood Lbr. Co.
*Watertown Northern	S. A. L.	East Coast Lbr. Co.
xWest Virginia Southern	C. & O.	Marmet Coal Co.

* Not shown in List of Corporate Names of Common Carriers, issued by Interstate Commerce Commission, April 7, 1926.
x The Fore River R. R. has made application for admission to the Per Diem Agreement.

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(G)

List of 41 Industrially Owned or Controlled Steam Railroads Who Make Settlement with their Direct Connections in Accordance with the "Birmingham Southern Rules"

Name of Road	Trunk Line Connections	Name of Owner
*Arkansas Short Line	M. P.–St. L. S. F.	Poinsett Lbr. & Mfg. Co.
Bauxite & Northern Ry.	C. R. I. & P.–M. P.	Aluminum Co. of America.
Bay Terminal R. R.	N. Y. C.–Tol. Terml.–W. & L. E.	Sun Oil Co.
Benwood & Wheeling Connecting Ry.	B. & O.–P. R. R.–W. & L. E.	National Tube Co.
Birmingham Southern R. R.	A. B. & C.–B. B.–C. of Ga.–I. C.–L. & N.–St. L. S. F.–Sal. Sou.–S. P.	U. S. Steel Corp:
California Oregon Coast	S. P.	
Carlton & Coast R. R.	S. P.	Carlton Con. Lbr. Co.
Central Ry. of Arkansas	C. R. I. & P.	Ft. Smith Lbr. Co.
Chestnut Ridge Ry.	C. R. R. N. J.–L. & N. E.	New Jersey Zinc Co.
Chicago Short Line Ry.	B. & O.–B. & O. C. T.–Belt Ry.–C. R. I. & P.–E. J. & E.–I. H. B.–P. R. R.	By-Products Coke Corp.
Fairchild & Northeastern Ry.	C. St. P. M. & O.–Soo Line	N. C. Foster Lbr. Co.
Fordyce & Princeton R. R.	C. R. I. & P.–St. L. S. W.	Fordyce Lbr. Co.; C. R. I. & P. Settle on basis of B'ham So. Rules; St. L. S. W. charge straight per diem except reclaim is allowed on Terminal Switch Business.
Genesee & Wyoming R. R.	B. R. & P.–D. L. & W.–Erie L. V.–N. Y. C.–P. R. R.	Retsof Mining Co.

Grasse River R. R. Corp.	N. Y. C.	Emporium ForestryCo.
Illinois Northern Ry.	A. T. S. F.–Belt Ry.–C. & A.–C. & N. W.–C. B. & Q.–C. J.–C. M. & St. P.–C. R. & I.–G. T.–I. C.–I. H. B.–Soo Line–P. R.R.	International Harvester Corp.
Lake Erie & Ft. Wayne R. R.	N. Y. C. R. R.–N. Y. C. & St. L.–P. R. R.	Fort Wayne Rolling Mills.
Lakeside & Marblehead R. R.	N. Y. C.–Ohio Pub. Sec.	Kelley Island Lime & Trans. Co.
Laona & Northern Ry.	C. & N. W.–Soo Line	Connor Land & Lbr. Co.
[fol. 1065–14]		
Manufacturers' Jct. Ry.	B. & O. C. T.–Belt Ry.–C. B. & Q.–I. C.	Western Electric Co.
Marathon County Ry.	C. & N. W.	Connor Land & Lbr. Co.
Massena Terminal R. R.	G. T. W.–N. Y. C.	Aluminum Co. of America.
McKeesport Connecting R. R.	B. & O.–P. R. R.–P. & L. E.	National Tube Co.
*Medford & Butte Falls R. R.	S. P.	Oregon Lbr. Co.
Montana Western Ry.	G. & N.	V. M. L. & W. Co.
Moshassuck Valley R. R.	N. Y. N. H. & H.	Sayles Bleacheries.
Northampton & Bath R. R.	C. R. R. N. J.–D. L. & W.–L. & N. E.	Atlas Portland Cement Co.
Ouachita & Northwestern Ry.	M. P.–T. & G.	La-Central Lbr. Co.
Owasco River Ry.	L. V.–N. Y. C.	International Harvester Corp.
Pittsburgh, Allegheny & McKees Rocks R. R.	B. & O.–B. & L. E.–P. C. & Y.–B. R. & P.–P. R. R.–P. & L. E.–P. & W. V.	Pressed Steel Car Co.
Pittsburgh & Ohio Valley Ry.	P. & L. E.–P. C. & Y.	American Steel & Wire Co.
Pullman R. R.	B. & O.–Belt–C. & W. I.–C. R. I. & P.–N. Y. C. & St. L.–C. W. P. & S.–C. & L.–I. C.–Me.–Wab.–C. S. S. & S.	Pullman Co.
Thornton & Alexandria Ry.	C. R. I. & P.–St. L. S. W.	Stout Lbr. Co.; C. R. I. & P. settle on basis of "Birmingham Southern" Rules; St. L. S. W. charge straight per diem except reclaim is allowed on Terminal Switch Business.
Tionesta Valley Ry.	B. & O.–B. R. & P.–P. R. R.	Central Leather Co.
Valley & Siletz R. R.	S. Pac.	W. W. M. Lbr. Co.
Valley R.	P. R. R.	Day Chemical Co.
Ware Shoals R. R.	P. & N.–Sou.	Ware Shoals Mfg. Co.
Warren & Ouachita Valley Ry.	C. R. I. & P.–M. P.	Southern & Arkansas Lbr. Co.
Warren & Saline River R. R.	C. R. I. & P.–M. P.	Bradley Lbr. Co.
Willamette Valley & Coast R. R.	S. P.	Haskell Carpenter Co.

Name of Road	Trunk Line Connections	Name of Owner
*Willamina & Grand Ronde R. R.	S. P.	Miami Corp.
Wyandotte Southern R. R.	D. T. & I.–M. C.–N. Y. C.	Penn. Salt Mfg. Co.

* Not shown in list of corporate names of common carriers issued by Interstate Commerce Commission, April 7, 1926.

[fol. 1065–15]

(H)

List of 5 Steam Railroads (Not Industrially Owned or Controlled) Who Do Not Subscribe to the Car Service and Per Diem Agreement but the Demurrage Collected from Shippers and Consignees is Retained by the Direct Connections

Cowlitz, Chehalis & Cascade Ry.

This road is a party to the National Car Demurrage Rules, but the demurrage is collected and retained by the connecting trunk lines C. M. & St. P.–G. N.–N. P.–U. P. This arrangement is of long standing, and the Cowlitz, Chehalis & Cascade has refused to assume any responsibility for car hire.

Manistee & Repton R. R. Co., Inc.

Under a contract with the Louisville & Nashville R. R., its only connection, dated April 6, 1912, the Manistee & Repton is required to maintain agencies according to the rules and regulations existing and governing L. & N. stations. Under this contract the agents use and enforce regulations of L. & N. demurrage tariffs, collecting charges as shown in same, and report directly to the L. & N. Auditing and Claim Departments.

Philadelphia Belt Line R. R. Co.

Enforces its own demurrage tariff against shippers and consignees. Through Accounting channels, the demurrage so collected is turned over to the (B. & O.) trunk line connection that delivered the car to the Belt Line.

Strouds Creek & Muddlety R. R. Co.

Winchester & Western R. R. Co.

Have filed National Car Demurrage Rules. When demurrage accrues, the amounts collected from consignees are turned over to the Baltimore & Ohio the only connection.

[fol. 1065–16]

[I]

List of 43 Industrially Owned or Controlled Steam Railroads Which are Reported by Direct Connections as Being Plant Facilities. Demurrage Is Charged Against Shippers and Consignees by Direct Connections in Accordance with the National Car Demurrage Rules, B. T. Jones' Tariff I. C. C. No. 1737—Item 5, Rule 3, Section E

Name of Road	Trunk Line Connections	Name of Owner	Does It Serve Any Other Industry
*Addystone & Ohio River R. R.	B. & O.	U. S. Cast Iron Pipe & Fdry. Co.	No
*Allegheny & South Side Ry.	P. R. R.–P. L. E.–N. Y. C.–P. & W. V.	Oliver Iron & Steel Co.	Yes
*Bare Rock R. R.	B. & O.	Murdock Sand Co.	No
*Benton & Saline River	C. R. I. & P.–M. P.	Ball Benton Gravel Co.	No
*Beaver Connecting R. R.	P. & L. E.–P. R. R.	Koppel Industrial Car & Equipment Co.	Yes
Beaver Valley R. R. Co.	P. & L. E.–P. R. R.	Sun Oil Co.	Yes
Brownstone & Middletown R. R. Co.	Reading Co.	Hummelstown Brownstone Co.	No
Carolina Western R. R.	A. C. L.	Camp Mfg. Co.	No
*Cherry River Boom & Lumber Co.	B. & O.	Cherry River Boom & Lumber Co.	Yes
*Chesapeake & Curtis Bay	B. & O.–P. R. R.–W. Md.	U. S. Asphalt Refining Co.	Yes
Cheswick & Harmar R. R. Co.	B. & L. E.–P. R. R.	Equitable Real Estate Co.	Yes
*Curtis Bay R. R.	B. & O.–P. R. R.	Davison Chemical Co.	Yes
*Dahoga & Highland Ry.	B. & O.–P. R. R.	McKean Chemical Co.	No
*Delaware River & Union R. R.	P. R. R.–Reading	Sun Oil Co.	Yes
Delray Terminal R. R. Co.	Del. Con.	Detroit Edison Co.	No
Dents Run R. R. Co.	B. & S.–P. R. R.	*Bennetts Branch Coal Co.	No
Donora Southern R. R. Co.	P. R. R.	American Steel & Wire Co.	No
Elwood, Anderson & Lapelle R. R.	N. Y. C.–St. L.–P. R. R.	American Sheet & Tin Plate Co.	No
Etna & Montrose R. R. Co.	B. & O.–P. R. R.	Carnegie Steel Co.	No
*Glidden & Southwestern Ry.	Soo Line	Mellen Lumber Co.	No

[fol. 1065–17]

*Gulf, Sabine & Red River R. R.	K. C. S.	Lutcher-Moore Lumber Co.	No
*Hartland R. R.	B. & O.	Midwest Utilities Co.	Yes
The name of this road has been changed to Middle Creek Ry.			
Hannibal Connecting R. R. Co.	C. B. & Q.	Atlas Portland Cement Co.	No
*Hudson R. R. & Transit Co.	P. R. R.	Crucible Steel Co.	No
Massillon Belt Ry. Co.	P. R. R.	Russell Engine Co.	Yes

Name of Road	Trunk Line Connections	Name of Owner	Does It Serve Any Other Industry
Mercer Valley R. R.	N. Y. C.-P. R. R.	Carnegie Steel Co.	Yes
*Michigan Northern Power	D. S. S. A.-Soo Line	Union Carbide Co.	No
*Monessen Southwestern Ry.	P. & L. E.	Pittsburgh Steel Co.	No
*Marysville & Arlington	G. N.-N. P.	Canyon Lumber Co.	Yes
New Haven & Dunbar R. R. Co.	B. & O.-P. R. R.	Dunbar Furnace Co.	Yes
*Nahma & Northern	Soo Line	Bay DeNoquet Lumber Co.	Yes
Pencoyd & Philadelphia R. R. Co.	P. R. R.-Reading	American Bridge Co.	No
Peru, LaSalle & Deer Park R. R. Co.	C. B. & Q.-C. R. I. & P.	Illinois Zinc Co.	No
*Pittsburgh & Allegheny River Ry.	P. R. R.	Crucible Steel Co.	No
Rowlesburg & Southern R. R. Co.	B. & O.	Keystone Mfg. Co.	No
Sabine & Neches Valley Ry. Co.	K. C. S.-Gulf Coast Lines	Peavy Moore Lumber Co.	No
South Shore R. R. Co.	P. & L. E.	Clinton Iron & Steel Co.	No
Scootac Ry. Co.	P. R. R.	Scootac Mining Co.	No
*Scottsdale Connecting Ry.	B. & O.-P. R. R.	U. S. Cast Iron Pipe & Foundry Co.	Yes
Strasburg R. R. Co.	P. R. R.	F. L. Musselman	No
[fol. 1065-18]			
*White Sulphur & Huntersville R. R.	C. & O.	T. J. Shylock & Co. The Sherwood Co. of West Va.	
Youngstown & Northern R. R. Co.	B. & O.-Erie-L. E. & E.-N. Y. C.-P. R. R.-P. & L. E.	Crucible Steel Co.	No
Wyandotte Terminal R. R.	D. T. & I.-M. C.-N. Y. C.	Michigan Alkali Co.	Yes

* Not shown in List of Corporate Names of Common Carriers, issued by Interstate Commerce Commission, April 7, 1926.
x The Fore River R. R. has applied for admission to the Per Diem Agreement.

Chicago, Ill.
Jan. 9, 1928
H.

[fol. 1066] Ex. 503 Before I. C. C. in Docket No. 17801

Corrected Exhibit No. 13

Present Method of Settlement for Car Hire with Electric Lines

Summary

62 Electric roads subscribe to the Car Service and Per Diem Agreement.

56 Electric roads settle at the per diem rate without Free time or reclaim.

8 Electric roads settle at the per diem rate with Free time.

23 Electric roads make settlement on a demurrage basis with 2 days' Free time.

29 Electric roads are treated as agent of shipper or consignee and demurrage assessed and collected by connecting carriers.

[fol. 1066-1]

62 Electric Lines, Subscribers to Per Diem Agreement

Arkansas Valley Interurban Ry.
Bamberger Elec. R. R.
British Columbia Electric
Central Calif. Trac. Co.
Charles City Western Ry.
Chicago, Aurora & Elgin
Chicago, Harvard & Geneva Lake
Chicago, North Shore & Milwaukee
Chicago, South Shore & South Bend
Cincinnati, Georgetown & Portsmouth
Cincinnati, Hamilton & Dayton Ry.
Clinton Davenport & Muscatine
Denver & Intermountain
Eastern New York Utilities Corp.
East St. Louis & Suburban
East St. Louis, Columbia & Waterloo
Evansville & Ohio Valley
Evansville Suburban & Newburgh
Hagerstown & Frederick
Illinois Traction System
Indiana Columbus & Eastern Trac. Co.
Iowa Southern Utilities Co.
Joplin & Pittsburgh
Kansas City, Clay County & St. Joseph
Kansas City, Kaw Valley & Western
Kansas City Public Service Co.
Key System Transit Co.
Lackawanna & Wyoming Valley
Lima, Toledo R. R.
Mason City & Clear Lake
Modesto & Empire Trac. Co.
Monongahela West Penn. Pub. Serv. Co.
Niagara Jct. Ry. Co.
Ohio Public Service Co.
Oklahoma Ry. Co.
Oregon Electric
Oshawa Ry. Co.
Pacific Electric
Penn Yan & Lake Shore
Petaluma & Santa Rose
Portland Elec. Power Co.
Rapid Ry.
Rock Island Southern Ry.
Sacramento Northern
St. Louis & Belleville Electric
Salt Lake & Utah
San Diego Electric
San Francisco-Sacramento R. R.

[fol. 1066-2]

Spokane, Coeur D'Alene & Palouse Ry.
South Brooklyn Ry.
Southern New York Ry.
Southern Ohio Public Service Co.
Southwest Missouri R. R.
Staten Island Rapid Transit
Toledo & Indiana R. R.
Union Traction Co.
United Rys.
Utah-Idaho Cent. R. R.
Washington & Old Dominion
Waterloo, Cedar Falls & Nor.
Wilkes-Barre & Hazleton Ry.
Windsor, Essex & Lake Shore Rapid

[fol. 1066-3]

56 Electric Lines Making Settlement in Accordance with Per Diem Rule 6—Without Free Time or Reclaim

Attleboro Branch R. R.
Aurora, Elgin & Fox River Elec. Co.
Bangor Hydro-Electric Ry.
Berkshire St. Ry.
Cortland County Trac. Co.
Cumberland Co. Power & Lt. Co.
Cleveland Sou. West. & Columbus Ry.
Chatham, Wallaceburg & Lake Erie Ry.
Detroit, Monroe & Toledo Short Line Ry.
Detroit United Ry. Co.
Elgin, Belvidere & Rockford Ry.
Ft. Wayne, Van Wert & Lima Trac. Co.
Fresno Interurban Ry.
Fresno Trac. Co.
Gulf & Miss. Trac. Co.
Holyoke St. Ry.
Holton Interurban Ry.
Hudson Valley Ry.
Ithaca Trac. Co.
Ind. Service Corp.
Kayderos Ry. Corp.
Lake Shore Elec. Ry.
Mt. Mansfield Electric Ry.
Milwaukee Northern Ry.
Milwaukee Elec. Ry. & Lt. Co.
Minnesota No. West. Elec.
Missouri & Kans. Ry.
Niagara Gorge Ry.
New York State Rys.
New York, Westchester & Boston R. R.
Nashville Interurban Ry.
Paul Smiths E. L. P. & R. R.
Peninsular Ry.
Philadelphia & Western Ry.
Pittsburg County Ry.
Salt Lake, Garfield & Western Ry.
San Francisco, Napa & Calistoga Ry.
Shelburne Falls & Colvain St. Ry.
Southern Ill. Ry. & Power Co.
Sou. Ind. & Gas & Elec. Ry. Co.
Springfield St. Ry. Co. (Mass.)
Springfield Terml. (Vt.)
St. Francois County R. R.
Springfield & Suburban Ry. (Ohio)
Toledo, Bowling Green & Sou. Trac. Co.

[fol. 1066-4]

Tidewater Southern
Tama & Toledo Elec. Ry. & Lt. Co.
Tidewater Power Co.
Trenton Princeton Trac. Co.
United Elec. Ry.
Visalia Elec. R. R.
Walla Walla Valley Ry. Co.
Washington, Baltimore & Annapolis Ry.
Willamette Valley Sou. Ry.
York Utilities
Youngstown & Ohio River R. R.

[fol. 1066–5]

8 Electric Roads Who Do Note Subscribe to the Car Service and Per Diem Agreement but Settle with their Direct Connections at the Per Diem Rate with Free Time

Name of Road	Connections	
Androscoggin & Kennebec	Me. Cent	Pays per diem on road haul cars; demurrage average agreement on switch cars.
Aurora, Elgin & Fox River Traction Co	C. B. & Q	Pays per diem on all cars except on cars switched to and from the Independent Pneumatic Tool Co. at Aurora, Ill., 3½ days free time is allowed.
Boise Valley Trac. Co	U. P	5 days free.
Cleveland Southwestern Ry. & Lt. Co. (Western Ohio Ry.)	B. & O	Pays per diem on all cars except its own company material which are subject to demurrage charges.
Lee County Central Elec	Q	3 days free.
Marion Bluffton Trac. Co	N. Y. C. & St. L	2 days free.
Pacific Northwest Trac. Co	C. M. & St. P.–G. N.–N. P.–P. S. & C.	4 days free single loads; 6 days free double loads.
South Michigan Ry	M. C	Cars interchanged Hickory Creek are for road haul service on electric line and subject to P. D. Rule 6. Cars interchanged at South Bend are for switch service and M. C. collects demurrage from consignees.

[fol. 1066–6]

23 Electric Roads Who Do Not Subscribe to the Car Service and Per Diem Agreement but Settle with their Direct Connections upon a Demurrage Basis with 2 Days' Free Time Allowed

Name of Road	Connections	
Benton Harbor & St. Jos. Ry. & Lt. Co	P. M.–Big Four–M. C	Interchange with P. M. discontinued. M. C. collects demurrage from consignees.
*Columbus, Del. & M. Trac. Co	H. V.	
Empire State R. R	D. L. & W.	
Fox & Illinois Union	C.–R. I.–Ill. Trac	Pays Ill. Trac. per diem without free time.
*Kewanee & Galva Ry. (Galesburg, Kewanee Elec. Ry.)	Q.	
*Gary & Valparaiso Elec. Ry	M. C	Interchange company material for elec. line only

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Name of Road	Connections	
Glendale & Montrose Ry.	Pac. Elec.–U. P.	Pac. Elec. settle on demurrage basis with 2 days free; U. P. settle on per diem Rule 6 without reclaim.
Grand River Valley Ry.	D. & R. G. W.	
Illinois Central Elec. Ry.	Q.–M. & St. L.	Pays M. & St. L. per diem without free time.
*Indiana Union Trac. Co.	C. C. C. & St. L.	
*Lancaster Trac. Co.	H. V.	
Muskogee Elec. Trac. Co.	M. P.–M. K. T.–St. L. S. F.	2½ days free state traffic.
Northern Ohio Power & Light Co.	Pa.–B. & O.	Interchange Co. material for Electric Line only.
Ohio River Elec. Ry.	H. V.	
*Ohio Southern Trac. Co.	H. V.	
Ohio Valley Elec. Ry.	H. V.	
Omaha, Lincoln & Beatrice	M. P.	Average Agreement.
*St. Jos. & Savannah Inter. R. R.	C. G. W.	
Scioto Valley Trac. Co.	H. V.	
*Seattle & Ranier Valley	N. P.–P. C.	
Terre Haute, Indianapolis & E. Trac. Co.	Pa.	
*Tuscaloosa Ry.	M. & O.	
*Winona Interurban Ry.	Pa.	

[fol. 1066–7]

20 Electric Roads which are Reported by their Direct Connections as being Facilities for the Shipper or Consignee—Demurrage is Charged Against Shippers and Consignees in Accordance with Rule 3, Section E, of the National Car Demurrage Rules

Name of Road	Connections	
Alabama Power Co.	L. & N.	Interchange Co. matl. only.
Augusta & Aiken Ry. & Elec.	Ga.	Arrangement made by Ga. R. R. Commission.
Chicago, South Bend & Nor. Ind.	M. C.–Pa.–P. M.	
*City of Seattle Ry.	G. N.	
*Claremont Elec.	B. & M.	
Dayton & Troy Elec.	B. & O.	
*Grays Harbor Ry. Lt. & Power Co.	N. P.	
*Linwood St. Ry.	N. H.	
*Lewisburg Ry. & Power Co.	C. & O.	
Minneapolis, Anoka & Cuyuna Range Ry.	G. N.–Soo Line.	

Puget Sound Elec. Ry.	C. M. & St. P.–N. P.–P. C.	Collects and turns demurrage over to connections
Scranton, Montrose & Binghampton	D. L. & W.	
*Seattle Municipal Ry.	G. N.–N. P.	Collects and turns demurrage over to connections.
Springfield Street Ry.	N. H.	
Toledo, Fostoria & Findlay	B. & O.	
*Tyler Trac. Co.	B. & O.	
*Tacoma Ry. & Power Co.	C. M. & St. P.–N. P.	
*Tacoma Municipal Ry.	G. N.–N. P.	
Wheeling Public Service	B. & O.	
Youngstown & Suburban R. R.	Pa.	

* Not shown in List of Corporate Names of Common Carriers, issued by Interstate Commerce Commission, April 7, 1926.

[fol. 1066-8] The following are briefs of replies received from direct connections of electric, interurban and street railway companies with whom some freight cars are interchanged but settlement therefor is not made in accordance with Per Diem Rule 6:

Cleveland Southwestern Ry. & Light Co. (Western Ohio):

Pays per diem on all cars handled except company use coal which is unloaded at power house, Elyria, O., within a few hundred feet of B. & O. connection, on which B. & O. charge demurrage. This road does not receive any revenue on this freight and B. & O. considers them the same as an industry located on one of its sidings and charges them accordingly.

Empire State R. R.:

Connects with D. L. & W., who advise cars interchanged with that road are handled on a demurrage basis, in accordance with practice established during Federal control.

Lee County Central Electric Ry.:

Connects with C. B. & Q. Settlement made on a per diem basis with 3 days' free time allowed. C. B. & Q. advise: "It has been in serious financial stress throughout its existence. There are several grain elevators located on its line and in order to protect investment, the owners of the elevators took charge of the road and are endeavoring to operate it to avoid serious financial loss. The interchange is very small and the per diem earnings amount to not more than $18 per month."

Marion Bluffton Traction Co.:

Connects with Nickel Plate, who advise that settlement is made on a per diem basis with 2 days' free time allowed. The only cars interchanged are those consigned to the Bluffton City Water Works. Very few cars interchanged.

Pacific Northwest Traction Co.:

Connects with C. M. & St. P., G. N. and N. P. Pays per diem but allowed 4 days' free time on single loads; 6 days' free time on double loads. G. N. advise: "We make al-

lowance because of traffic reasons, and the action of other lines made necessary that we protect our interests by entering into the same arrangement." N. P. advise: "The provisions of Per Diem Rule 6 are not applied to this road by any of its connections, and it was necessary for this company to do likewise because competing lines had in effect such an arrangement." C., M. & St. P. advise: "Our bills were prepared on straight per diem basis but payment was declined. Repeated efforts failed to bring about settlement on that basis for the reason that other connections were granting free time allowance, and for competitive reasons we entered into a like agreement."

[fol. 1066-9] Indiana Union Traction Co.:

Connects with Big Four and receives coal consigned to the Sunnyside Tubercular Sanitarium at Oaklandon, Ind. Big Four does not recognize the Traction line as a railroad and has not established any interchange with it; therefore treats it as an industry on a straight demurrage basis, the same as if cars were delivered to a private industry.

Benton Harbor & St. Joseph Ry. & Light Co.:

Big Four advise exception in the case of this road was made as result of action on part of the Michigan Utilities Commission, in which the Commission had in mind primarily to have refrigerator cars furnished for fruit loading in the districts on the traction line. There have not been nor are there at the present time any through rates or percents in effect. Freight charges on loaded cars have been collected from the traction line as a representative of the consignee or consignor. There is no arrangement in effect covering the settlement of charges with the traction company the same as is in effect with railroads. Pere Marquette advise: "The plan of settlement with this road was reported as being made on demurrage basis under the Straight Plan with 2 days' free time allowance. The interchange arrangement with that line has been discontinued and there have been no cars interchanged for over a year."

Glendale-Montrose Ry.:

Connects with Pacific Electric Ry. Co. and makes settlement on a demurrage basis. This arrangement was started

when the road commenced operations and has not been changed.

Columbus, Delaware & Marion Traction Co.:

Connects with Hocking Valley, who advise: "Our Car Service Department endeavored to have this road make settlement in accordance with Rule 6 but without success; therefore, in order to make application of charges uniform we applied the demurrage tariff."

Kewaunee & Galva Ry.:

Connects with C., B. & Q., who advise: "This is a short electric line. Handles very little traffic, most of which is their own company supplies, and demurrage is applied in lieu of car hire."

Grand River Valley Ry.:

Connects with D. & R. G. W., who advise: "This road should not, in our opinion, be classed as a railroad. It is in reality a street car company. Cars loaded or unloaded on its tracks are handled on a demurrage basis. We occasionally loan the Grand River Valley cars for local service on its line, in which case, per diem rules are enforced and per diem is charged."

Gary & Valparaiso Electric Ry.:

Connects with Michigan Central. Interchange about 7 cars per month, principally their own company freight, which is handled on a demurrage basis, no interchange re-
[fol. 1066-10] ports being made; at present, delivering about 5 cars a month, which is material, sand, gravel, etc., for the Gary & Valparaiso Electric Ry.

Illinois Central Electric:

Connects with C., B. & Q., who make settlement on a demurrage basis. Do very little business.

Muskogee Electric Traction Co.:

Connects with M. P., M.-K.-T. and St. L.-S. F. Makes settlement on demurrage basis with 2 days' free time on interstate traffic and 2½ days' free on state traffic. Con-

necting lines advise this arrangement is because of a special situation with respect to industries served by the traction company. In reality, the cars are placed on demurrage basis when delivered to that line for loading by industries served by it. This is covered by order of the Corporation Commission of Oklahoma, entered September 15, 1923.

Ohio Southern Traction Co.:

Connects with Hocking Valley. Makes settlement on a demurrage basis because it refused to pay per diem.

Omaha, Lincoln & Beatrice Ry.:

Connects with M. P., who advise settlement is not in accordance with Per Diem Rule 6 because of the views expressed by the Interstate Commerce Commission in establishing Birmingham Southern rules.

Seattle & Rainier Valley Ry.:

Connects with Northern Pacific and Pacific Coast R. R. N. P. advise: "As service performed by that company consists of switching cars to and from industries for our account, we consider assessment of demurrage directly against industries justified in order that proper charges will be collected for car detention." Pacific Coast R. R. advise: "We are simply following the practice of the trunk lines which also interchange cars with this railroad."

Tuscaloosa Ry. Utilities:

Connects with Mobile & Ohio, who advise: "This is a small line which acts as our agent in handling cars to and from industries served by it. Cars delivered are kept in our demurrage account and charged to shippers and consignees accordingly."

Alabama Power Co.:

Connects with Louisville & Nashville, who advise: "This road handles material to its dam on the river for itself and the Dixie Construction Co., which is the Construction Department of the Alabama Power Co. and cars are delivered to it as an industry and demurrage charged in accordance with the demurrage rules.

Augusta & Aiken Ry. & Electric Co.:

Connects with Georgia R. R., who advise: "This road [fol. 1066-11] was constructed for the purpose of handling passenger traffic. It owns and operates the street car system in Augusta and serves the U. S. Veterans' Hospital and the U. S. Arsenal *Arsenal* by receiving cars for them from the Georgia R. R. In doing so, it acts as the agent of the consignees and not the agent of the Georgia R. R. Its switching charges for this service are prescribed by the Georgia Public Service Commission and are collected by it from the consignees. They are not absorbed by the Georgia R. R. Authority for assessing demurrage directly against consignees is a mutual agreement assented to by all parties, which was drawn up in proper legal form by counsel representing the parties. It was formerly on a per diem basis, but under this arrangement, it had the use of cars containing company material consigned to it at a less rate than other consignees at Augusta, who were required to pay demurrage. The electric company also made settlement at per diem rate with the few consignees for which it received carload freight, resulting in discrimination against other consignees at Augusta. This situation was brought to the attention of the Georgia Railroad Commission, which ordered the agreement for the interchange of cars abrogated and at the same time held that the electric company and the consignees served by it should be on the same basis from a demurrage standpoint as other consignees at Augusta."

Southern Ry. advise: "This is nothing more than an electric passenger line, and while we interchanged some cars with them two or three years ago on a demurrage basis, the records since that date show no interchange of freight cars, and the road should be omitted from the list so far as the Southern Ry. is concerned."

Chicago, South Bend & Northern Indiana:

Connect with Pennsylvania R. R.; who interchange with it some coal consigned to the South Bend Water Works and assess demurrage for detention at the Water Works plant. Treat this road exactly the same as any other industry and as an agent of the consignee.

Claremont Electric Ry.:

Was organized to take over from the Receiver of the Claremont Railway Lighting Co. the railroad property of that company because of the fact that the various industries located on the line were anxious to retain the services of the electric line for handling freight to and from the interchange tracks of the Boston & Maine. It is claimed by the directors of the Claremont Ry. that the railway constitutes a joint facility serving all of the companies located on its line, each of whom has an equal voice in the management of the company. It does not serve any industries other than the seven industries that own it. Authority for assessing demurrage directly against the industries is Rule 3, Section E, of the National Car Demurrage Rules.

Grays Harbor Railway Light & Power Co.:

Connects with Northern Pacific, who have a contract for interchange of cars, which contains provisions that it will be governed by the usual rules relating to demurrage. Actual check and collection of charges is made by N. P. agent.

Linwood Street Ry.:

Connects with N. Y., N. H. & H. Is owned by Whitins Machine Works, and does not serve any other industry. [fol. 1066-12] New Haven collects demurrage from the industry, in accordance with Demurrage Rule 3, Section E, and considers the Linwood Street Railway as drayman for the industry which it serves.

Lewisburg Ronceverte Electric Ry.:

Connects with Chesapeake & Ohio, who considers it an industrial common carrier and therefore not subject to Per Diem Rule 6.

Ohio River Railway & Power Co.:

Connects with Hocking Valley, who advise that demurrage is assessed against industries served by that line because it was unable to apply Per Diem Rule 6, the management of the traction company having absolutely refused to pay per diem while the cars were on its rails.

Puget Sound Electric Ry.:

Connects with Northern Pacific and Pacific Coast R. R. Northern Pacific advise: "As service performed by that company consists of switching cars to and from industries for our account, we consider assessment of demurrage directly against industries justified in order that proper charges may be collected for car detention." Pacific Coast advise it is simply following practice of the Northern Pacific.

Scranton, Montrose & Binghamton Ry.:

Connects with D., L. & W., who advise: "This is an electric street railway. The only industry it serves is a small stone quarry located on a track owned by the D., L. & W. but operated by the electric line under a contract which has been in effect since 1915. The arrangement was made for the purpose of avoiding a crossing of a steam and electric railroad at grade, and the trolley company agreed to perform switching at a stated rate per car, the railroad company to assess and collect demurrage on the same basis as before. The trolley company acts in behalf of the railroad in the placement or removal of cars."

Terre Haute, Indianapolis & Eastern Traction Co.:

Connects with Pennsylvania Railroad at Cartersburg, Indiana, a suburb of Indianapolis, for delivery only of coal and supplies to the Indiana State Boys' Industrial Home at Plainfield, Indiana, also a suburb of Indianapolis. The Pennsylvania Railroad charges demurrage against the T. H., I. & E. Traction Company under an arrangement made in prior years at the direction of the State of Indiana through its Railroad Commission, account of the Boys' Industrial Home being a State institution, and under the Indiana State Laws special arrangements may be made under the circumstances.

Tacoma Railway & Power Co.:

Connects with C., M. & St. P. and N. P. C., M. & St. P. advise: "This road serves various industries, including a limited amount of business that moves from and to their own shops. All of the cars which we deliver, other than those loaded with company material, are for the Peterman

Mfg. Co., against whom we collect demurrage. The electric company has consistently refused to make any per diem settlement on cars we deliver to it, but in lieu thereof has [fol. 1066-13] agreed to permit us to assess and collect demurrage. To accomplish this, we make daily yard checks and assess demurrage as though the Peterman Mfg. Co. was located on our own rails, as this is the only manner in which we could serve to protect the interest of our company in the way of per diem charges." Northern Pacific advise: "As service performed by that company consists of switching cars to and from industries for our account, we consider assessment of demurrage directly against industries justified, in order that proper charges may be collected for car detention. An arrangement is in effect with this company whereby it makes collection of demurrage charges for the account of Northern Pacific Ry."

Tacoma Municipal Ry.:

Connects with Great Northern who advise: "This is a belt line operated by the City of Tacoma. Under contract, we have trackage rights over that line, although the Municipal Ry. does the switching. This contract provides that we assess and collect demurrage direct against the industries." Northern Pacific advise that it has the same contract.

Wheeling Public Service Co.:

Connects with B. & O., who advise: "Our action in charging demurrage against industries is based upon the demurrage rules and the theory that the electric line is the agent of the industry in moving the car from the interchange track of the road haul carrier to the industry and returning it to the interchange."

Chicago, Ill., March 15, 1928.
J.

[fol. 1067] Ex. 504 Before I. C. C. in Docket No. 17801

EXHIBIT No. 14

Summary of Steam Roads, Miles Operated, Freight Cars Owned and Present Method of Car Hire Settlement

Method of Settlement for Car Hire	No. of Roads	%	Miles Operated	%	Freight Cars Owned	%
Subscribers to Per Diem Agreement	*1347	77.81	306,323	97.79	2,620,992	99.81
Non-Subscribers:						
Per Diem without free time or reclaim	196	11.32	3,813	1.21	1,727	.07
Roads not Industrially Owned:						
Per Diem with free time	18	1.04	266	.08	131	.01
Demurrage with 2 days free	18	1.04	308	.10	86	
Plant facility basis	5	.29	95	.03	8	
Roads Industrially Owned:						
Per Diem with free time	29	1.68	830	.27	667	.11
Demurrage with 2 days free	34	1.97	484	.15	789	
Birmingham Southern Rules	41	2.36	743	.24	1081	
Plant facility basis	43	2.49	403	.13	405	
Totals	1731	100	313,265	100	2,625,886	100

* Includes 472 roads and 875 subsidiary roads who operate under the agreement of the parent company.

[fol. 1067a]

Summary of Electric Roads, Miles Operated, Freight Cars Owned and Present Method of Car Hire Settlement.

Method of Settlement for Car Hire	No. of Roads	%	Miles Operated	%	Freight Cars Owned	%
Subscribers to Per Diem Agreement	62	37.	5,682	47.5	7,931	99.75
Non-Subscribers:						
Per Diem without free time or reclaim	56	33.	3,255	27.3	.....	.....
Per Diem with free time	8	5.	412	3.5	.....	.....
Demurrage with 2 days free	23	13.	1,698	14.2	20	0.25
Plant facility basis	20	12.	893	7.5	.....	.....
Totals	169	100	11,940	100	7,951	100

Note: The miles of road operated by electric lines shown above is greatly in excess of the actual miles used for freight traffic interchanged with steam roads. A large majority of these electric lines are either street railways or interurban, and are primarily devoted to passenger service. As an illustration of the limited mileage of these lines devoted to freight interchange service, the following are examples:

(1) Chicago, South Bend & Northern Indiana. This is a street railway and interurban line operating 67 miles. The only interchange is with the New York Central at Osceola, Ind., where it receives a frw cars annually consigned to the City Water Works at Nishawaka, the haul being approximately 3 miles.

(2) Tacoma Railway & Power Co. This is the street railway of Tacoma, Wash. Its total mileage is 89 miles. The only interchange is approximately 100 cars per year consigned to the State Insane Asylum at South Tacoma. The business is received from the Northern Pacific and the haul for the Tacoma Railway & Power Company is only 4 miles.

(3) Terre Haute, Indianapolis & Eastern Traction Co. This is a street railway and interurban line operating in the Southern Central portion of the State of Indiana. The total mileage is 335 miles. The only interchange is with the Pennsylvania at Cartersburg, Ind., where a few cars are received per year for the Indiana Boys' Industrial School, at Plainfield, Ind. The haul for the Traction Company is less than 2 miles.

(4) Northern Ohio Power & Light Co. This is an electric interurban line operating in Northern Ohio. The total mileage is 249.59 miles. The only interchange is with the Pennsylvania at Cuyahoga Falls where company material is delivered for the Power plant located ½ mile from the interchange track.

Chicago, Ill., Mar. 20, 1928
H.

[Here follows Exhibit 505 before I. C. C. in Docket No. 17801, marked side folio 1068.]

1068

American Railway Association

ORIGINAL AND AMENDED FORMS OF PER DIEM RULES GOVERNING SETTLEMENT FOR THE USE OF FREIGHT CARS

July 1, 1902, to July 1, 1927

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1927

ORIGINAL AND AMENDED FORMS OF PER DIEM RULES*

Definitions.

Adopted April 24, 1902; effective July 1, 1902:

Home Car.—A car on the road to which it belongs.

Foreign Car.—A car on a road to which it does not belong.

Private Car.—A car having other than railroad ownership.

Home.—A location where a car is in the hands of its owner.

Home Road.—The road which owns a car, or upon which the home of a private car is located.

Home Route.—The line of intermediate roads over which a foreign car was moved from home. (Eliminated March 1, 1920.)

Home Junction.—A junction with the home road.

Home Route Junction.—A junction on the home route. (Eliminated March 1, 1920.)

SWITCHING SERVICE.—*Original reading, adopted April 24, 1902; effective July 1, 1902:*

Switching Service.—The movement of a car at a charge for the service rendered; the road performing such service not participating in the freight rate.

Amended form, adopted October 28, 1903; effective January 1, 1904:

Switching Service.—The movement of a car to be loaded or unloaded, or the movement of a car between railroads, at a charge for the service rendered within designated switching limits, the road performing the service not participating in the freight rate.

Amended form, effective March 1, 1923: (See †Code of Switching Reclaim Rules.)

Adopted December 3, 1913; effective January 1, 1914:

Subscriber.—A road which is a subscriber to the Car Service and Per Diem Agreement.

Non-Subscriber.—A road which is not a subscriber to the Car Service and Per Diem Agreement.

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*See pages 68 to 76 for changes in the Per Diem Rules during the period of Federal control.

†The Code of Switching Reclaim Rules is shown on pages 56 to 67.

Rule 1.

Original reading, adopted April 24, 1902; effective July 1, 1902:

1. The rate for the use of freight cars shall be 20 cents per car per day, which shall be paid for every calendar day, and shall be known as the per diem rate.

Amended form, adopted October 25, 1905; effective July 1, 1906:

1. The rate for the use of freight cars shall be 25 cents per car per day, which shall be paid for every calendar day, and shall be known as the per diem rate.

Amended form, adopted October 24, 1906; effective July 1, 1907:

1. The rate for the use of freight cars shall be 50 cents per cars per day, which shall be paid for every calendar day and shall be known as the per diem rate.

Amended form, adopted February 7, 1908; effective March 1, 1908:

1. The rate for the use of freight cars shall be 25 cents per car per day, which shall be paid for every calendar day and shall be known as the per diem rate.

Amended form, adopted January 27, 1910; effective March 1, 1910:

1. The rate for the use of freight cars shall be 30 cents per car per day for the five months of March, April, May, June and July of each year, and 35 cents per car per day for the remaining seven months, viz., January and February and August, September, October, November and December, which shall be paid for every calendar day, and shall be known as the per diem rate.

Amended form, adopted May 15, 1912; effective January 1, 1913:

1. The rate for the use of freight cars shall be 45 cents per car per day, which shall be paid for every calendar day, and shall be known as the per diem rate.

Amended form, adopted November 20, 1912; effective July 1, 1913:

1. The rate for the use of freight cars shall be 45 cents per car per day, which shall be paid for every calendar day, and shall be known as the per diem rate; except that where per diem is not reported to car owner within six* months from the last day of the month in which it is earned the rate shall be increased 5 cents per car per day; and except in cases where amount has been reported in error to another road, as provided in Per Diem Rule 11.

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*(Note)—Per Diem included in the report for either month, up to and including the sixth, immediately following the month in which it is earned, shall be at the regular rate; per diem reported in the report of seventh of any subsequent month shall be at the increased rate, the reports to be furnished as required by Per Diem Rule 11.

Amended form, adopted May 20, 1914; *effective July* 31, 1914:

1. The rate for the use of freight cars shall be 45 cents per car per day, which shall be paid for every calendar day, and shall be known as the per diem rate; except that where per diem is not reported to car owner within six months from the last day of the month in which it is earned, the rate shall be increased 5 cents per car per day; and except in cases where amount has been reported in error to another road, as provided in Per Diem Rule 11.

Amended form, adopted May 19, 1915; *effective July* 1, 1915:

1. The rate for the use of freight cars shall be 45 cents per car per day, which shall be paid for every calendar day, and shall be known as the per diem rate; except that where per diem is not reported to car owner within six months from the last day of the month in which it is earned, the rate shall be increased 5 cents per car per day.

Amended form, adopted November 15, 1916; *effective December* 1, 1916:

1. The rate for the use of freight cars shall be 45** cents per car per day, but may be increased for a specified period to an amount not in excess of $1.25 per car per day, which shall be paid for every calendar day, and shall be known as the per diem rate; except that where per diem is not reported to car owner within six months from the last day of the month in which it is earned, the rate shall be increased 5 cents per car per day.

Amended form; effective March 1, 1920:

1. The rate for the use of freight cars shall be 90 cents per car per day, which shall be paid for every calendar day, and shall be known as the per diem rate, except that where per diem is not reported to car owner within four (4) months from the last day of the month in which it is earned, the rate shall be increased fifteen (15) cents per car per day.

Amended form, effective November 1, 1920:

1. The rate for the use of freight cars shall be one dollar ($1.00) per car per day, which shall be paid for every calendar day, and shall be known as the per diem rate, except that where per diem is not reported to car owner within four (4) months from the last day of the month in which it is earned the rate shall be increased fifteen (15) cents per car per day.

**The rate for the use of freight cars from December 15, 1916, to March 31, 1917, was 75c per car per day; the rate from April 1, 1917, is 60 cents per car per day.

Amended form, effective July 1, 1921:

1. The rate for the use of freight cars shall be $1.00 per car per day, which shall be paid for every calendar day and shall be known as the per diem rate; except that when per diem is not reported to car owner within four months from the last day of the month in which it is earned, the rate shall be increased fifteen (15) cents per car per day for each six months' period or fraction thereof that report of such per diem is thereafter withheld; provided that the aggregate increase in the rate shall not exceed 60 cents per car per day.

Note.—The increased penalty rates will apply from December 1, 1921, on all unreported per diem earned prior to July 1, 19[illegible]

Rule 2.

Original reading, adopted April 24, 1902; effective July 1, 1902:

2. Days shall be reckoned by subtracting the date of receipt from the date of delivery.

A road which receives and delivers a car on the same day shall not pay the per diem for that day.

Amended form, adopted October 28, 1903; effective January 1, 1904:

2. Days shall be reckoned by subtracting the date of receipt from the date of delivery. The day of receipt should be disregarded, and payment made for day of delivery.

A road receiving and delivering a car on the same date shall not pay the per diem for that day.

Amended form, effective March 1, 1920:

2. Days shall be reckoned by subtracting the date of receipt from the date of delivery. The day of receipt shall be disregarded, and payment made for day of delivery.

A road receiving and delivering a car on the same date shall not pay the per diem for that day.

Records of receipt and delivery under this rule shall be those obtained from the reports provided for in Rule 9.

Rule 3.

Old Rule 3. Original reading, adopted April 24, 1902; effective July 1, 1902:

3. A road shall have the right to demand the return of its car after it has been twenty days consecutively on any road. If the car is held by that road more than ten days after the date of such notice, making thirty days in all, thereafter a penalty rate of 80 cents per day in addition to the per diem rate shall be paid by such road for the further use of that car.

Amended form, adopted April 27, 1904; effective July 1, 1904:

3. A road shall have the right to demand the return of its car after it has been twenty days consecutively on any road. If the car is held by that road more than ten days after the date of such notice on the prescribed form (L), making thirty days in all, thereafter a penalty rate of 80 cents per day in addition to the per diem rate shall be paid by such road for the further use of that car.

Amended form, adopted October 25, 1905; effective July 1, 1906:

3. A road shall have the right to demand the return of its car after it has been twenty days consecutively on any road. If the car is held by that road more than ten days after the date of such notice on the prescribed form (N), making thirty days in all, thereafter a penalty rate of 75 cents per day in addition to the per diem rate shall be paid by such road for the further use of that car.
Eliminated October 24, 1906; effective July 1, 1907.

Original reading, adopted October 30, 1907; effective January 1, 1908:

3. A road shall have the right to demand the return of its cars in accordance with Rules 1, 2, 3 or 4 of the Code of Car Service Rules of the American Railway Association.

Amended form, adopted May 15, 1912; effective September 1, 1912:

3. Freight cars must be handled as prescribed by Rules 1, 2, 3 and 4 of the Code of Car Service Rules of the American Railway Association.

Amended form, adopted November 15, 1916; effective January 1, 1917:*

3. Freight cars must be handled as prescribed in Rules, 1, 2 3 and 4 of the Code of Car Service Rules of the American Railway Association.

A road diverting a foreign car shall pay to the owner thereof the sum of five dollars in addition to the per diem and shall report same as a separate item on the Per Diem Report for the month in which the car was diverted.

Amended form, promulgated by the Commission on Car Service January 31, 1917; effective February 21, 1917; suspended April 26, 1917:*

3. Freight cars must be handled as prescribed in Rules, 1, 2 3 and 4 of the Code of Car Service Rules of the American Railway Association.

A road diverting a foreign car shall pay to the owner thereof the sum of five dollars in addition to the per diem and shall report

*All diversion penalties under Per Diem Rule 3 cancelled by Commission on Car Service General Order CS-1 April 26, 1917.

same as a separate item on the Per Diem Report for the month in which the car was diverted, except that where such five-dollar penalty charge is not reported to car owner within six months from the last day of the month in which it accrues, the penalty shall be ten dollar.

Amended form, effective March 1, 1920:

3. Freight cars must be handled as prescribed by Rules †1 to 5, inclusive, of the Code of Car Service Rules of the American Railway Association.

Rule 4.

Adopted April 24, 1902; effective July 1, 1902:

4. All railroads, including ferry lines, shall be responsible to the car owner for amounts accruing for the use of a car at the established rates, whether such car is in road service or switching service, until the car has been delivered to the owner or to another road.

Amended form, effective March 1, 1920:

4. Each railroad, including ferry lines, shall be responsible to the car owner for amounts accruing for the use of a car at the established per diem rate, whether such car is in road or switching service.

Rule 5.

Original reading, adopted April 24, 1902; effective July 1, 1902:

5. An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory.

Amended form, adopted December 3, 1913; effective January 1, 1914:

5. An arbitrary amount for each car in switching service may be reclaimed by each individual switching line from the roads for which the service was performed. This amount shall be based upon the average number of days, not to exceed five, actually required in such switching service, to be determined annually by an examination of the records of each individual switching line by the roads directly interested for each local territory.

No reclaim shall be allowed for an intermediate switching movement.

No reclaim shall be allowed under this rule to a non-subscriber.

†Car Service Rules 1, 2, 3, 4 and 5 are shown on page 55.

Amended form, effective March 1, 1923:

5. (a) An amount for each car in switching service may be reclaimed by each individual switching road from the road for which the service was performed. This amount shall be based upon the average number of days, not to exceed five (5), for cars handled in Terminal Switching Service except as otherwise provided in paragraph (b), actually required in such switching service to be determined annually, or at such other periods as may be agreed upon by the roads interested, by an examination of the records of each individual switching road, by the roads interested, for each local territory, except that roads in any local territory may agree to the settlement of terminal switching reclaims on the basis of actual time involved in handling the cars during the month for which reclaim is made, subject to an agreed maximum number of days on any one car, the reclaim on pick-up and diverted cars shall be determined by a plan to be agreed upon by the interested roads, and the total reclaim for any month shall not exceed an average of five (5) days per car.

(b) An amount equal to the actual per diem accruing on each car loaded with live stock handled in switching service (but not including cars loaded with emigrant movables or exhibition live stock, which are subject to Section (a) of this rule) may be reclaimed by each individual switching road from the road for which the service was performed, provided that such reclaim shall not exceed one (1) day on any one car.

(c) No reclaim shall be allowed for an intermediate switching movement.

(d) No reclaim shall be allowed for an inter-terminal switching movement.

(e) No reclaim shall be allowed to a non-subscriber.

(f) Unless otherwise unanimously agreed to by the interested roads, the Code of Switching Reclaim Rules of the American Railway Association shall govern in determining switching reclaim allowances.

Amended form, effective July 1, 1925:

(a) An amount for each car in switching service may be reclaimed by each individual switching road from the road for which the service was performed. This amount shall be based upon the average number of days, not to exceed five (5), for cars handled in Terminal Switching Service except as otherwise provided in paragraph (b), actually required in such switching service to be determined annually, or at such other periods as may be agreed upon by the roads interested, by an examination of the records of each individual switching road, by the roads interested, for each local territory, except that roads in any local territory may agree to the settlement of terminal switching

reclaims on the basis of actual time involved in handling the cars during the month for which the reclaim is made, subject to an agreed maximum number of days on any one car, the reclaim on pick-up and diverted cars shall be determined by a plan to be agreed upon by the interested roads, and the total reclaim for any month shall not exceed an average of five (5) days per car.

(b) An amount equal to the actual per diem accruing on each car loaded with live stock handled in switching service (but not including cars loaded with emigrant movables or exhibition live stock, which are subject to Section (a) of this rule) may be reclaimed by each individual switching road from the road for which the service was performed, provided that such reclaim shall not exceed one (1) day on any one car.

(c) Except as provided in paragraph (d), an intermediate switching road may reclaim one (1) day's per diem only from the delivering road on any car on which per diem accrues while in intermediate switching service.

A terminal switching road delivering a car to an intermediate switching road for delivery to a carrier road shall pay the reclaim to the intermediate switching road and may reclaim such amount from the carrier road for which the service was performed.

(d) No reclaim shall be allowed for an inter-terminal switching movement.

(e) No reclaim shall be allowed to a non-subscriber.

(f) Unless otherwise unanimously agreed to by the interested roads, the Code of Switching Reclaim Rules of the American Railway Association shall govern in determining switching reclaim allowances.

Amended form, effective July 1, 1927:

(a) An amount for each car in switching service may be reclaimed by each individual switching road from the road for which the service was performed. This amount shall be based upon the average number of days, not to exceed five (5), for cars handled in Terminal Switching Service except as otherwise provided in paragraph (b), actually required in such switching service to be determined annually, or at such other periods as may be agreed upon by the roads interested, by an examination of the records of each individual switching road, by the roads interested, for each local territory, except that roads in any local territory may agree to the settlement of terminal switching reclaims on the basis of actual time involved in handling the cars during the month for which the reclaim is made, subject to an agreed maximum number of days on any one car, the reclaim on pick-up and diverted cars shall be determined by a plan to be agreed upon by the interested roads, and the total reclaim for any month shall not exceed an average of five (5) days per car.

(b) An amount equal to the actual per diem accruing on each car loaded with live stock handled in switching service (but not including cars loaded with emigrant movables or exhibition live stock, which are subject to Section (a) of this rule) may be reclaimed by each individual switching road from the road for which the service was performed, provided that such reclaim shall not exceed one (1) day on any one car.

(c) Except as provided in paragraph (d), an intermediate switching road may reclaim one (1) day's per diem only from the delivering road on any car on which per diem accrues while in intermediate switching service; however, a car handled in intermediate switching service which is delayed on the intermediate switching road over midnight of the date received on account of being held under Rule 15 is not subject to intermediate reclaim.

A terminal switching road delivering a car to an intermediate switching road for delivery to a carrier road shall pay the reclaim to the intermediate switching road and may reclaim such amount from the carrier road for which the service was performed.

(d) No reclaim shall be allowed for an inter-terminal switching movement.

(e) No reclaim shall be allowed to a non-subscriber.

(f) Unless otherwise unanimously agreed to by the interested roads, the Code of Switching Reclaim Rules of the American Railway Association shall govern in determining switching reclaim allowances.

Amended form, effective January 1, 1928:

(a) An amount for each car in switching service may be reclaimed by each individual switching road from the road for which the service was performed. This amount shall be based upon the average number of days, not to exceed five (5), for cars handled in Terminal Switching Service except as otherwise provided in paragraphs (b) and (c), actually required in such switching service to be determined annually, or at such other periods as may be agreed upon by the roads interested, by an examination of the records of each individual switching road, by the roads interested, for each local territory, except that roads in any local territory may agree to the settlement of terminal switching reclaims on the basis of actual time involved in handling the cars during the month for which the reclaim is made, subject to an agreed maximum number of days on any one car, the reclaim on pick-up and diverted cars shall be determined by a plan to be agreed upon by the interested roads, and the total reclaim for any month shall not exceed an average of five (5) days per car.

(b) An amount equal to the actual per diem accruing on each car loaded with live stock handled in switching service (but not including cars loaded with emigrant movables or exhibition live stock, which are subject to Section (a) of this rule) may be reclaimed by each individual switching road from the road for which the service was

performed, provided that such reclaim shall not exceed one (1) day on any one car.

(c) An amount equal to the actual per diem accruing on each car containing less-than-car-load freight (including cotton), commonly known as a trap or ferry car, handled in switching service, originating at or destined to points outside the switching district, may be reclaimed by each individual switching road from the road for which the service was performed, provided the movement is duly authorized by tariff publication and subject to a switching charge, and further provided that such reclaim shall not exceed three days on any one car.

(d) Except as provided in paragraph (e) an intermediate switching road may reclaim one (1) day's per diem only from the delivering road on any car on which per diem accrues while in intermediate switching service; however, a car handled in intermediate switching service which is delayed on the intermediate switching road over midnight of the date received on account of being held under Rule 15 is not subject to intermediate reclaim.

A terminal switching road delivering a car to an intermediate switching road for delivery to a carrier road shall pay the reclaim to the Intermediate switching road and may reclaim such amount from the carrier road for which the service was performed.

(e) No reclaim shall be allowed for an inter-terminal switching movement except as provided in paragraph (c) of this rule.

(f) No reclaim shall be allowed to a non-subscriber.

(g) Unless otherwise unanimously agreed to by the interested roads, the †Code of Switching Reclaim Rules of the American Railway Association shall govern in determining switching reclaim allowances.

Rule 6.

Original reading; adopted April 24, 1902; effective July 1, 1902:

6. In case a road delivers an empty foreign car without the consent of the owner to a road which does not pay per diem; or if a road permits the loading or reconsigning of a foreign car without the consent of the owner to such a road it shall be responsible to the owner for the payment of an amount equal to the per diem accruing on the car while on such road.

Amended form, adopted October 26, 1904; effective January 1, 1905:

6. In case a road delivers an empty car without the consent of the owner to a road which does not pay per diem; or if a road permits the loading or reconsigning of a foreign car without the consent of the owner to such a road it shall be responsible to the owner for the payment of an amount equal to the per diem accruing on the car while on such road.

In case the road so delivering or authorizing the delivery of a foreign car connects directly with the road which does not pay per diem, penalty shall accrue as if delivery had not been made.

†The Code of Switching Reclaim Rules is shown on pages 56 to 67.

Amended form, adopted October 30, 1907; effective January 1, 1908:

6. In case a road delivers an empty foreign car without the consent of the owner to a road which does not pay per diem; or if the road permits the loading or reconsigning of a foreign car without the consent of the owner to such a road it shall be responsible to the owner for the payment of an amount equal to the per diem accruing on the car while on such road.

Amended form, adopted December 3, 1913; effective January 1, 1914:

6. In case a subscriber delivers a car of another subscriber to a non-subscriber it shall pay to the owner an amount equal to the per diem accruing on the car while on such non-subscriber road. The owner will accept settlement for the use of the car only from the delivering subscriber, who must make settlement with the non-subscriber.

Amended form, effective March 1, 1920:

6. In case a subscriber delivers a car of another subscriber to a non-subscriber it shall pay to the owner an amount equal to the per diem accruing on the car while on such non-subscriber road. The owner will accept settlement for the use of the car only from the delivering subscriber, which shall make settlement with the non-subscriber.

Amended form, effective July 1, 1922:

6. (a) In case a subscriber delivers a car of any subscriber to a non-subscriber it shall be responsible to the owner for the per diem accruing on the car while on such non-subscriber road. The owner will accept settlement for the use of the car only from the delivering subscriber, which shall make settlement with the non-subscriber in accordance with paragraph (b) of this rule.

(b) Subscriber roads shall make settlement with their non-subscriber common carrier connections (other than roads which have been declared industrial common carriers) at the established per diem rate without any free time allowance and without reclaim.

Rule 7.

Original reading, adopted April 24, 1902; effective July 1, 1902:

7. When a car has been destroyed or so damaged as to require an appraisement under the Master Car Builders' Rules the per diem charge will cease from the date of notice to owner.

Amended form, adopted October 28, 1903; effective January 1, 1904:

7. When home route cards have been requested under the Master Car Builders' Rules the per diem shall cease from the date of request to owner.

When a car has been destroyed and reported under the Master Car Builders' Rules the per diem shall cease from the date of notice to owner.

Amended form, adopted April 22, 1908; effective July 1, 1908:

7. When home route cards have been requested under the Master Car Builders' Rules the per diem shall cease from the date of request to owner.

The transportation department of the owner, on determining the proper home route for each Master Car Builders' home route card, shall send written notice of the issuance of such card to the transportation department of each railroad over which the car is routed home.

Upon receipt of the Master Car Builders' home route card by the road holding the car, memorandum way-bill should be issued to accompany the car forwarded under the Master Car Builders' home route card to the owning road.

When a car has been destroyed and reported under the Master Car Builders' Rules the per diem shall cease from the date of notice to owner.

Amended form, adopted May 20, 1914; effective August 1, 1914:

7. When a car has been destroyed and reported under Division V—Mechanical (M. C. B) Rules the per diem shall cease from the date of notice to owner.

Rule 8.

Original reading, adopted April 24, 1902; effective July 1, 1902:

8. When a car is detained awaiting the receipt of repair material from its owner, the per diem charge will cease from the date the necessary material is ordered from the owner until the date when it is received by the road holding the car.

Amended form, adopted October 28, 1903; effective January 1, 1904:

8. When a car is detained awaiting the receipt of repair material from its owner, the per diem shall cease from the date the necessary material is ordered from the owner until the date when it is received by the road holding the car.

Amended form, adopted May 20, 1914; effective August 1, 1914:

8. When a car is detained awaiting the receipt of repair material which under M. C. B. Rules must be obtained from the owner, the per diem shall cease from the date the necessary material is ordered from the owner until the date on which it is shipped, as evidenced by carrier's shipping receipt.

When a car unsafe to load on account of general worn-out condition, due to age, decay or corrosion, is reported to owner

under M. C. B. Rule 120, per diem shall cease from date of such report.

If owner authorizes the repair of such car, and no repair material is required from owner, per diem shall begin after repairs are completed, but in no case to exceed 60 days from the date such authority is given. If repair material must be obtained from the owner under Paragraph 1 of this Rule, per diem shall begin after repairs are completed, but in no case to exceed 60 days from date material is shipped as evidenced by carrier's shipping receipt.

Amended form, adopted November 15, 1916; effective January 1, 1917:

8. (a) When a car is detained awaiting the receipt of repair material which under M. C. B. Rules must be obtained from the owner, the per diem shall cease from the date the necessary material is ordered from the owner until the date on which it is shipped in the manner prescribed by M. C. B. Rule 122, as evidenced by carrier's shipping receipt.

(b) When a car is reported to its owner under M. C. B. Rule 120, per diem shall cease from date of such report.

If owner authorizes the repair of such car, and no repair material is required from owner, per diem shall begin after repairs are completed, but in no case to exceed 60 days from the date such authority is given. If repair material must be obtained from the owner under M. C. B. Rules, per diem shall begin after repairs are completed, but in no case to exceed 60 days from date such authority is given, plus the number of days intervening between the date necessary material is ordered and the date on which material is shipped in the manner provided by M. C. B. Rule 122, as evidence by carrier's shipping receipt.

(c) Under paragraphs (a) and (b), if more than one order for material is made, the first order only shall stop the per diem.

Amended form, effective March 1, 1920:

8. (a) When a car is detained awaiting the receipt of repair material, which under Division V—Mechanical (M. C. B.) Rules must be obtained from the owner, the per diem shall cease from the date the necessary material is ordered from the owner until the date on which it is shipped in the manner prescribed by Division V—Mechanical (M. C. B.) Rule 122, as evidenced by carrier's shipping receipt.

(b) When a car is reported to its owner under Division V—Mechanical (M. C. B.) Rule 120, per diem shall cease from date of such report.

If owner authorizes the repair of such car, and no repair material is required from owner, per diem shall begin after repairs are completed, but in no case to exceed 60 days from the date such authority is given. If repair material must be obtained from the owner under Division V—Mechanical (M. C. B.) Rules, per diem shall begin after

repairs are completed, but in no case to exceed 60 days from date such authority is given, plus the number of days intervening between the date necessary material is ordered and the date on which material is shipped in the manner provided by Division V—Mechanical (M. C. B.) Rule 122, as evidenced by carrier's shipping receipt.

(c) Under paragraphs (a) and (b), if more than one order for material is made, the first order only shall stop the per diem.

Rule 9.

Original reading, adopted April 24, 1902; effective July 1, 1902:

9. The Interchange Reports shall close at midnight and shall include all cars exchanged upon the date named unless otherwise noted thereon. The reports must be sent to the car record office on each day whether cars are exchanged or not.

In cases where there are different standards of time at junction points the earlier time shall be used.

The Interchange Reports to the car record office from junction points must be signed by the agents or other authorized representatives of both roads on the prescribed form, the receipt of car delivered being thereby acknowledged.* The time of delivery of cars upon interchange tracks of connecting lines shall, prima facie, be the time given by the delivering road.

Amended form, adopted October 28, 1903; effective January 1, 1904:

9. The Interchange Reports shall close at midnight and shall include all cars exchanged upon the date named unless otherwise noted thereon. The reports must be sent to the car record office on each day whether cars are exchanged or not.

In cases where there are different standards of time at junction points the time of the more easterly reckoning shall be used.

The Interchange Reports to the car record office from junction points must be signed by the agents or other authorized representatives of both roads on the prescribed form, the receipt of cars delivered being thereby acknowledged. Car Service Rule 5 governs the delivery of cars. The time of delivery of cars upon interchange tracks of connecting lines shall, *prima facie*, be the time given by the delivering road.

Amended form, adopted October 30, 1907; effective January 1, 1908:

9. The Interchange Reports shall close at midnight and shall include all cars exchanged upon the date named unless otherwise noted thereon. The sheets of these reports shall be numbered consecutively, beginning with the first of each month.

*Car Service Rule 5 governs the delivery of a car.

In cases where there are different standards of time at junction points the time of the more easterly reckoning shall be used.

The Interchange Reports to the car record office from junction points must be signed by the agent or other authorized representatives of both roads on the prescribed form, the receipt of cars delivered being thereby acknowledged. Car Service Rule 5 governs the delivery of cars. The time of delivery of cars upon interchange tracks of connecting lines shall, *prima facie,* be the time given by the delivering road.

Amended form, adopted May 19, 1909; *effective July* 1, 1909:

9. The Interchange Reports shall be made on the prescribed form No. (B). Columns 1 to 5, inclusive, must be filled.

They shall close at midnight and shall include all cars delivered upon the date named unless otherwise noted thereon. Three carbon copies shall be made in addition to the original. The sheets shall be numbered consecutively, beginning with the first of each month.

In cases where there are different standards of time at a junction the time of the more easterly reckoning shall be used.

The reports must be signed by the proper representative of the delivering road and certified to by the proper representative of the receiving road after checking. The original with one copy shall be returned to the delivering road.

Car Service Rule 5 governs the delivery of cars. The date and time of delivery of cars upon interchange tracks of connecting lines shall, *prima facie,* be the date and time given by the delivering road.

Amended form, adopted May 21, 1913; *effective September* 1, 1913:

9. The Interchange Reports shall be made on the prescribed form No. (B-1). Columns 2, 3, 4, 5, 9 and 10 must be filled.

They shall close at midnight and shall include all cars delivered upon the date named unless otherwise noted thereon. Three carbon copies shall be made in addition to the original. Reports must be made for each calendar day, the sheets to be numbered consecutively for each connecting line, beginning with the first of each month.

In cases where there are different standards of time at a junction the time of the more easterly reckoning shall be used.

The reports must be signed by the proper representative of the delivering road and certified to by the proper representative of the receiving road after checking. The original with one copy shall be returned to the delivering road.

Car Service Rule 5 governs the delivery of cars. The date and time of delivery of cars upon interchange tracks of connecting lines shall, *prima facie,* be the date and time given by the delivering road.

Amended form, effective March 1, 1920:

9. (a) The Interchange Reports shall be made for each calendar day on the prescribed form (B-1). Columns 2, 3, 4, 5 and 9 shall be filled. They shall close as of midnight and shall include all cars delivered on the date for which made.

(b) Corrections to Interchange Reports shall be made on the prescribed form (Q) immediately upon the discovery of errors in reports which have already been forwarded to Car Service Officers; otherwise corrections to be made on all copies of Interchange Reports before forwarding.

(c) Both Interchange and Correction Reports shall be made in quadruplicate by the use of carbon paper, two copies for each road involved, and shall be numbered consecutively for each connecting line, commencing with the first of each month; a separate series of numbers to be used for each form of report.

(d) The report shall be signed by the proper representative of the delivering road and certified to by the proper representative of the receiving road after checking. The original with one copy shall be returned to the road making the report.

(e) Car Service Rule 6§ governs the delivery of cars. The date and time of delivery of cars upon interchange tracks of connecting line shall, prima facie, be the date and time given by the delivering road. In cases where there are different standards of time at a junction, the time of the more easterly reckoning shall govern.

Amended form, effective July 1, 1926:

(a) The Interchange Reports shall be made for each calendar day on the prescribed form (B-1). Columns 2, 3, 4, 5 and 9 shall be filled. They shall close as of midnight and shall include all cars delivered on the date for which made. For days on which no cars are interchanged the reports shall read "No cars interchanged."

(b) Corrections to Interchange Reports shall be made on the prescribed form (Q) immediately upon the discovery of errors in reports which have already been forwarded to Car Service Officers; otherwise corrections to be made on all copies of Interchange Reports before forwarding.

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§Car Service Rule 6:

6. Cars shall be considered as having been delivered to a connecting railroad when placed upon the track agreed upon and designated as the interchange track for such deliveries, accompanied or preceded by proper data for forwarding, and to insure delivery and accepted by the car inspector of the receiving road.

Unless otherwise arranged between the roads concerned, the receiving road shall be responsible for the cars, contents and per diem after receipt of the proper data** for forwarding and to insure delivery, and until they have been accepted by its inspector or returned to the delivering road.

**NOTE.—The character of the necessary data will be determined by each receiving road in accordance with the conditions of its service.

(c) Both Interchange and Correction Reports shall be made in quadruplicate by the use of carbon paper, two copies for each road involved, and shall be numbered consecutively for each connecting line, commencing with the first of each month; a separate series of numbers to be used for each form of report.

(d) The report shall be signed by the proper representative of the delivering road and certified to by the proper representative of the receiving road after checking. The original with one copy shall be returned to the road making the report.

(e) Car Service Rule 6§ governs the delivery of cars. The date and time of delivery of cars upon interchange tracks of connecting line shall, prima facie, be the date and time given by the delivering road. In cases where there are different standards of time at a junction, the time of the more easterly reckoning shall govern.

Rule 10.

Original reading, adopted April 24, 1902; effective July 1, 1902:

10. The Junction Report for each day will be made to car owners on the prescribed form as promptly as possible after the receipt of the Interchange Report for that day.

Amended form, adopted April 27, 1904; effective July 1, 1904:

10. The Junction Report for each day will be made to car owners on the prescribed form (D) as promptly as possible after the receipt of the Interchange Report for that day.

Amended form, effective March 1, 1920:

10. The Junction Report for each day shall be made to car owners on the prescribed form (D) or on the cut-up interchange slips, as promptly as possible after the receipt of the Interchange Report for that day, but not later than the close of the second working day following the receipt of the Interchange Report.

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§Car Service Rule 6:

6. Cars shall be considered as having been delivered to a connecting railroad when placed upon the track agreed upon and designated as the interchange track for such deliveries, accompanied or preceded by proper data for forwarding and to insure delivery and accepted by the car inspector of the receiving road.

Unless otherwise arranged between the roads concerned, the receiving road shall be responsible for the cars, contents and per diem after receipt of the proper data** for forwarding and to insure delivery, and until they have been accepted by its inspector or returned to the delivering road.

**Note.—The character of the necessary data will be determined by each receiving road in accordance with the conditions of its service.

Rule 11.

Original reading, adopted April 24, 1902; effective July 1, 1902:

11. Within thirty days after the end of each calendar month, car owners shall be furnished with a Per Diem Report for that month, on the prescribed form, showing the number of days each car has been in service upon the road making the report. In computing per diem the day of receipt should be disregarded and payment made for day of delivery.

Amended form, adopted October 28, 1903; effective January 1, 1904:

11. Within thirty days after the end of each calendar month, car owners shall be furnished with a Per Diem Report for that month, on the prescribed form, showing the number of days each car has been in service upon the road making the report.

Amended form, adopted April 5, 1905; effective July 1, 1905:

11. Within thirty days after the end of each calendar month, car owners shall be furnished with a Per Diem Report for that month, on the prescribed form, showing the number of days each car has been in service upon the road making the report.

Statement of corrections or omissions in Per Diem Reports must be presented within one year from the date when the Per Diem Report to which they relate has been received. This will not prevent the continuance of any case after the period named, if it has been previously opened, even though the claim should eventually rest upon some road other than the one originally addressed.*

Amended form, adopted October 30, 1907; effective January 1, 1908:

11. Within thirty days after the end of each calendar month, car owners shall be furnished with a Per Diem Report for that month, on the prescribed form, showing the number of days each car has been in service upon the road making the report.

Statement of corrections or omissions in Per Diem Reports must be presented after three months and within one year from the date when the Per Diem Report to which they relate has been received. This will not prevent the continuance of any case after the period named, if it has been previously opened, even though the claim should eventually rest upon some road other than the one originally addressed.*

Amended form, adopted November 8, 1908; effective July 1, 1909:

11. Within thirty days after the end of each calendar month, car owners shall be furnished with a Per Diem Report for that month,

*This paragraph will not apply to statements bearing on amounts accruing prior to July 1, 1905.

on the prescribed form, showing the number of days each car has been in service upon the road making the report.

Statement of corrections or omissions in Per Diem Reports must be presented after three months and within one year from the date when the Per Diem Report to which they relate has been received. This will not prevent the continuance of any case after the period named, if it has been previously opened, even though the claim should eventually rest upon some road other than the one originally addressed.

Amended form, adopted May 18, 1910; *effective July* 1, 1910:

11. Within thirty days after the end of each calendar month, car owners shall be furnished with a Per Diem Report for that month on the prescribed form, showing the number of days each car has been in service upon the road making the report.

Claims covering corrections or omissions in Per Diem Reports must be presented after four months and within one year from the last day of the month in which the per diem was earned. This will not prevent the continuance of any case after the period named, if it has been previously opened, even though claim should eventually rest upon some road other than the one originally addressed, except that the privilege of continuance shall cease when claimant fails to return claim or present it to another road within a period of six months from date such claim is last returned to claimant.

Where per diem has been reported to other than car owner, which fact is developed in the investigation of a claim for short per diem, the reporting road shall be responsible to car owner for per diem earned, and shall have the privilege of continuing such claim for refund of per diem from the road to which it was thus incorrectly reported. When per diem has been reported to car owner under incorrect initial or number, which fact is developed in the investigation of a claim for short per diem, the reporting road shall have the right to transfer the allowance from the incorrect to the correct initial or number as an offset to the claim.

Amended form, adopted November 18, 1914; *effective January* 1, 1915:

11. Within thirty days after the end of each calendar month, car owners shall be furnished with a Per Diem Report for that month on the prescribed form G, showing the number of days each car has been in service upon the road making the report.

Claim covering corrections or omissions in Per Diem Reports must be presented after four months and within one year from the last day of the month in which the per diem was earned. This will not prevent the continuance of any case after the period named, if it has been previously opened, even though claim should eventually rest upon some road other than the one originally addressed, except

that the privilege of continuance shall cease when claimant fails to return claim or present it to another road within a period of six months from date such claim is last returned to claimant.

Where per diem has been reported to other than car owner, which fact is developed in the investigation of a claim for short per diem, the reporting road shall be responsible to car owner for per diem earned, and shall have the privilege of continuing such claim for refund of per diem from the road to which it was thus incorrectly reported. When per diem has been reported to car owner under incorrect initial or number, which fact is developed in the investigation of a claim for short per diem, the reporting road shall have the right to transfer the allowance from the incorrect to the correct initial or number as an offset to the claim.

Amended form, adopted November 15, 1916; *effective December* 1, 1916:

11. Within thirty days after the end of each calendar month, car owners shall be furnished with a Per Diem Report for that month, on the prescribed form G, showing separately for open* and closed* cars the number of days each car has been in service upon the road making the report.

Claim covering corrections or omissions in Per Diem Reports must be presented after four months and within one year from the last day of the month in which the per diem was earned. This will not prevent the continuance of any case after the period named, if it has been previously opened, even though the claim should eventually rest upon some road other than the one originally addressed, except that the privilege of continuance shall cease when claimant fails to return claim or present it to another road within a period of six months from date such claim is last returned to claimant.

Where per diem has been reported to other than car owner, which fact is developed in the investigation of a claim for short per diem, the reporting road shall be responsible to car owner for per diem earned, and shall have the privilege of continuing such claim for refund of per diem from the road to which it was thus incorrectly reported. When per diem has been reported to car owner under incorrect initial or number, which fact is developed in the investigation of a claim for short per diem, the reporting road shall have the right to transfer the allowance from the incorrect to the correct initial or number as an offset to the claim.

Amended form, promulgated by the Commission on Car Service January 31, 1917; *effective February* 21, 1917:

11. Within thirty days after the end of each calendar month, car owners shall be furnished with a Per Diem Report for that month, on

*NOTE.—Open cars, Classes G, H and F, and closed cars, Classes X, R, V, S and T, as specified in the Definitions of the Master Car Builders' Association and as reported in *The Official Railway Equipment Register.*

the prescribed form G, showing the number of days each car has been in service upon the road making the report.

Claim covering corrections or omissions in Per Diem Reports must be presented after four months and within one year from the last day of the month in which the per diem was earned or the diversion penalty accrued. This will not prevent the continuance of any case after the period named, if it has been previously opened, even though the claim should eventually rest upon some road other than the one originally addressed, except that the privilege of continuance shall cease when claimant fails to return claim or present it to another road within a period of six months from date such claim is last returned to claimant.

Where per diem or diversion penalty has been reported to other than car owner, which fact is developed in the investigation of a claim for short per diem or diversion penalty, the reporting road shall be responsible to car owner for per diem earned or diversion penalty, and shall have the privilege of continuing such claim for refund of per diem or diversion penalty from the road to which it was thus incorrectly reported. When the per diem or diversion penalty has been reported to car owner under incorrect initial or number, which fact is developed in the investigation of a claim for short per diem or diversion penalty, the reporting road shall have the right to transfer the allowance from the incorrect to the correct initial or number as an offset to the claim.

Amended form, effective March 1, 1920:

11. (a) Within forty (40) days after the end of each calendar month, car owners shall be furnished with a Per Diem Report for that month, on the prescribed form (G), showing the number of days each car has been in service upon the road making the report.

(b) Claim covering errors or omissions in Per Diem Reports shall be presented after four months and within seven months from the last day of the month in which the per diem was earned. This will not prevent the continuance of any case after the period named, if it has been previously opened, even though the claim should eventually rest upon some road other than the one originally addressed, except that the privilege of continuance shall cease when claimant fails to return claim or present it to another road within a period of two months from the date such claim is last returned to claimant.

(c) Each claim shall be adjusted or handled in accordance with the provisions of O. M. 30 within 30 days after its receipt from claimant or another road. If not so adjusted or handled the claimant shall send to the delinquent road with its first or second Per Diem Report issued after expiration of the time limit of 30 days, a copy of each claim not so adjusted or handled, and shall show on the summary of the Per

Diem Report the number of such claims enclosed and the total number of days covered thereby. If claimant fails to send such copy in accordance with the provisions of this paragraph the privilege of continuance of claim shall cease.

(d) The delinquent road shall adjust or handle each claim in accordance with the provisions of O. M. 30 within 30 days after receipt of the copy of claim referred to in paragraph (c). If it fails to do so, it shall allow the claim in full in the Per Diem Report next issued, following the expiration of the time limit of 30 days, otherwise the claimant may take credit for the full amount of such claim in its next Per Diem Report to the delinquent road.

(e) When per diem has been reported to other than car owner, which fact is developed in the investigation of a claim for short per diem, the reporting road shall be responsible to car owner for per diem earned and shall have the privilege of continuing such claim for refund of per diem from the road to which it was thus incorrectly reported. When the per diem has been reported car owner under incorrect initial or number, which fact is developed in the investigation of a claim for short per diem, the reporting road shall have the right to transfer the allowance from the incorrect to the correct initial or number as an offset to the claim.

(f) Six months after the effective date of this rule it shall become applicable to all unadjusted claims for per diem earned prior to March 1, 1920.

Amended form, effective July 1, 1921:

11. (a) Within forty (40) days after the end of each calendar month, car owners shall be furnished with a Per Diem Report for that month, on the prescribed form (G), showing the number of days each car has been in possession of the road making the report.

(b) Claims covering errors or omissions in Per Diem Reports shall be presented after five months and within eight months from the last day of the month in which the per diem was earned, but such claims shall not be presented until all amounts previously reported have been properly credited, and further, provided that such claims are listed on and accompanied by prescribed form (U) in duplicate. This will not prevent the continuance of any case after the period named, if it has been previously opened, even though the claim should eventually rest upon some road other than the one originally addressed, except that the privilege of continuance shall cease when claimant fails to return claim or present it to another road, listed on prescribed form (U) in duplicate, within a period of three months from the last day of the month in which such claim is last returned to claimant. The road receiving the claims must promptly acknowledge receipt by signing one copy of the statement and returning it to the claimant, except that when there is a discrepancy as between the statement and the claims

received, such discrepancy must be noted on the copy of statement returned, in which case the claimant must immediately furnish copies of the missing claims.

(c) The road receiving the claims shall promptly adjust, or handle in accordance with the provisions of O. M. 30.‡

(d) When per diem has been reported to other than car owner, which fact is developed in the investigation of a claim for short per diem, the reporting road shall be responsible to car owner for per diem earned and shall have the privilege of continuing such claim for refund of per diem from the road to which it was thus incorrectly reported. When the per diem has been reported car owner under incorrect initial or number, which fact is developed in the investigation of a claim for short per diem, the reporting road shall have the right to transfer the allowance from the incorrect to the correct initial or number as an offset to the claim.

Amended form, effective July 1, 1924:

(a) Within forty (40) days after the end of each calendar month, car owners shall be furnished with a Per Diem Report for that month, on the prescribed form, (G), showing the number of days each car has been in possession of the road making the report.

(b) Claims covering errors or omissions in Per Diem Reports shall be presented after five months and within eight months from the last day of the month in which the per diem was earned, but such claims shall not be presented until all amounts previously reported have been properly credited. This will not prevent the continuance of any case after the period named, if it has been previously opened, even though the claim should eventually rest upon some road other than the one originally addressed, except that the privilege of continuance shall cease when claimant fails to return claim or present it to another road within a period of three months from the last day of the month in which such claim is last returned to claimant.

(c) The road receiving the claims shall promptly adjust, or handle in accordance with the provisions of O. M. 30.‡

‡O. M. 30

1. All records shown in a claim for per diem shortage should be verified by claimant before presentation, and when claim is made against a direct connection reference to interchange, sheet and line number should be shown.

2. If complete junction reports have not been received, claim should be filed against the road having apparently failed to furnish a report, and claimant should show in proper column that such information has not been received.

3. If complete junction reports have been received, claim should be filed against the road which apparently owes the per diem, as indicated by the claimant's record.

4. A claim covering an ON HAND car should show date of preceding junction movement instead of "OH."

5. A road receiving a claim indicating a difference between its records and that

(d) When per diem has been reported to other than car owner, which fact is developed in the investigation of a claim for short per diem, the reporting road shall be responsible to car owner for per diem earned and shall have the privilege of continuing such claim for refund of per diem from the road to which it was thus incorrectly reported. When the per diem has been reported car owner under incorrect initial or number, which fact is developed in the investigation of a claim for short per diem, the reporting road shall have the right to transfer the allowance from the incorrect to the correct initial or number as an offset to the claim.

(e) This rule applies to all claims issued and to be issued for unreported per diem earned prior to July 1, 1921.

Rule 12

Original reading, adopted April 24, 1902; effective July 1, 1902:

12. The settlement of amounts accruing for the use of cars shall be made monthly without regard to reclaims pending.

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quoted by claimant, or road from which claim is received, should verify its records by reference to interchange reports.

6. If a comparison of the records shown in a claim with the verified records of the road receiving same indicates a diference between its record and that of the claimant as to date of DELIVERY to connection, claim should be forwarded direct to the claimant and correct information given.

7. If a comparison of the records shown in a claim with the verified records of the road receiving same indicates a difference between its record and that of the claimant as to date of RECEIPT from connection, its record should be entered and claim forwarded to such connection attached to Transmittal Form N-1, together with such other information as may be necessary to further the prompt handling of the claim. A copy of each Transmittal Form N-1 should be forwarded to the claimant.

8. If a comparison of the records shown in a claim with the verified records of the road receiving same indicates a difference between its record and the record of the road with which the car was interchanged, the claim should be handled to a conclusion by such roads and a copy of each Transmittal Form N-1 forwarded to the claimant.

9. If a comparison of the records shown in a claim with the verified records of the road receiving same indicates that it owes a part of the per diem and it is necessary to forward the claim to connecting line for further handling, the acknowledgment of the indebtedness and the month in which allowance will be made should be shown on the Transmittal Form N-1, and copy sent to claimant.

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*Adopted at Annual Session Transportation Division, April 8, 1925.

*"*Resolved*, That the road to which a per diem claim is addressed must take up all necessary questions relating thereto with its connections and in case of dispute as to date of interchange, determine the responsibility for the per diem due, the road acknowledging responsibility to advise claimant direct. In case of dispute in date of interchange the receiving road will accept the delivering road's date or furnish proof to the contrary.

*"*Resolved*, That when a road claims no record the responsibility for establishing the fact of delivery shall rest upon the delivering road."

Amended form, effective July 1, 1921:

13. (a) Switching reclaim under Rule 5 shall be presented within three months from the last day of the month in which the per diem accrued, and shall be allowed as presented within thirty (30) days after receipt, except that supplementary switching reclaims covering errors or omissions shall be presented within six months from the last day of the month in which the per diem accrued and shall be allowed as presented within thirty (30) days after receipt.

The road paying the reclaim may present a counter reclaim to adjust errors in the original reclaim statement, provided such counter reclaim is presented within three months from the last day of the month in which the original was received.

The privilege of continuance of the counter reclaim shall cease when either road interested fails to return it to the other road within two months from the last day of the month in which it was last received, the delinquent road to be responsible for the unadjusted amount.

(b) Reclaim under Rule 15 shall be presented within six months from the last day of the month in which cars were delivered by the holding road. The road receiving reclaim shall check and present exceptions to the claimant within four months from the last day of the month in which the reclaim was received and shall allow in the next open Per Diem Report the amount not covered by exceptions.

The privilege of continuance of reclaim thereafter shall cease when either road interested fails to return it to the other within two months from the last day of the month in which it was last received, the delinquent road to be responsible for the unadjusted amount.

(c) Special reclaim shall be presented within twelve months from the last day of the month in which the per diem accrued. The road receiving reclaim shall check and present exceptions to the claimant within four months from the last day of the month in which the reclaim was received and shall allow in the next open Per Diem Report the amount not covered by exceptions.

The privilege of continuance of reclaim thereafter shall cease when either road interested fails to return it to the other within two months from the last day of the month in which it was last received, the delinquent road to be responsible for the unadjusted amount.

(d) The provisions of paragraphs (a), (b) or (c) will not prevent the continuance of any reclaim after the period named if it has been previously opened when the reclaim eventually rests upon some road other than the one originally addressed, except that the reclaim shall be presented to such other road within two months from the last day of the month, in which it was last received by claimant. Further handling shall be subject to the provisions of paragraphs (a), (b) and (c).

(e) Reclaims shall be made by the designated officer of the road which pays the per diem to the designated officer of the road from which the allowance is reclaimed, unless specifically agreed by the interested roads to permit the presentation and acceptance of such reclaims by local representatives.

Amended form, effective September 1, 1923:

13. (a) Switching reclaim under Rule 5 shall be presented within three months from the last day of the month in which the per diem accrued, and shall be allowed as presented within thirty (30) days after receipt, except that supplementary switching reclaims covering errors or omissions shall be presented within six months from the last day of the month in which the per diem accrued and shall be allowed as presented within thirty (30) days after receipt.

The road paying the reclaim may present a counter reclaim to adjust errors in the original reclaim statement, provided such counter reclaim is presented within three months from the last day of the month in which the original was received.

The privilege of continuance of the counter reclaim shall cease when either road interested fails to return it to the other road within two months from the last day of the month in which it was last received, the delinquent road to be responsible for the unadjusted amount.

(b) Reclaim under Rule 15 shall be presented within six months from the last day of the month in which cars were delivered by the holding road. The road receiving reclaim shall check and present exceptions to the claimant within four months from the last day of the month in which the reclaim was received and shall allow in the next open Per Diem Report the amount not covered by exceptions.

The privilege of continuance of reclaim thereafter shall cease when either road interested fails to return it to the other within two months from the last day of the month in which it was last received, the delinquent road to be responsible for the unadjusted amount.

(c) Special reclaim shall be presented in accordance with the provisions of Rule 14, Paragraph (k). The road receiving reclaim shall check and present exceptions to the claimant within four months from the last day of the month in which the reclaim was received, and shall allow in the next open Per Diem Report the amount not covered by exceptions.

The privilege of continuance of reclaim thereafter shall cease when either road interested fails to return it to the other within two months from the last day of the month in which it was last received, the delinquent road to be responsible for the unadjusted amount.

(d) The provisions of paragraphs (a), (b) or (c) will not prevent the continuance of any reclaim after the period named if it has been previously opened when the reclaim eventually rests upon some road other than the one originally addressed, except that the reclaim shall

be presented to such other road within two months from the last day of the month, in which it was last received by claimant. Further handling shall be subject to the provisions of paragraphs (a), (b) and (c).

(e) Reclaims shall be made by the designated officer of the road which pays the per diem to the designated officer of the road from which the allowance is reclaimed, unless specifically agreed by the interested roads to permit the presentation and acceptance of such reclaims by local representatives.

Amended form, effective July 1, 1927:

(a) Terminal and Intermediate Switching Reclaim Statements under Rule 5 shall be prepared separately and presented within three (3) months from the last day of the month in which the per diem accrued, except that supplementary reclaim statements covering errors and/or omissions shall be presented within six (6) months from the last day of the month in which the per diem accrued. Original and supplementary switching reclaim statements shall be allowed as presented within thirty (30) days after receipt.

The road paying a terminal or an intermediate switching reclaim may present a counter reclaim to cover errors or adjustments therein, provided it is presented within three (3) months from the last day of the month in which the reclaim on which counter reclaim is in order, was received.

The privilege of continuance of the counter reclaim shall cease when either road interested fails to return it to the other road within two months from the last day of the month in which it was last received, the delinquent road, to be responsible for the unadjusted amount.

NOTE.—Under this rule an intermediate reclaim shall not be supplementary to an original terminal reclaim, nor a terminal reclaim supplementary to an original intermediate reclaim.

(b) Reclaim under Rule No. 14 shall be presented within six months from the last day of the month in which disposition of car is received by the holding road, except where demurrage adjustment is involved, in which case reclaim shall be presented within six (6) months from the last day of the month in which the demurrage is cancelled or refunded. The road receiving reclaim shall present exceptions to the claimant within four months from the last day of the month in which reclaim was received or allow the amount claimed in the next open per diem report.

The privilege of continuance of reclaim thereafter shall cease when either road interested fails to return it to the other within two months from the last day of the month in which it was last received, the delinquent road to be responsible for the unadjusted amount.

(c) Reclaim under Rule 15 shall be presented within six months from the last day of the month in which cars were delivered by the holding road. The road receiving reclaim shall check and present exceptions to the claimant within four months from the last day of the month in which the reclaim was received and shall allow in the next open Per Diem Report the amount not covered by exceptions.

The privilege of continuance of reclaim thereafter shall cease when either road interested fails to return it to the other within two months from the last day of the month in which it was last received, the delinquent road to be responsible for the unadjusted amount.

(d) The provisions of paragraphs (a), (b) or (c) will not prevent the continuance of any reclaim after the period named if it has been previously opened when the reclaim eventually rests upon some road other than the one originally addressed, except that the reclaim shall be presented to such other road within two months from the last day of the month in which it was last received by claimant. Further handling shall be subject to the provisions of paragraphs (a), (b) and (c).

(e) Reclaims shall be made by the designated officer of the road which pays the per diem to the designated officer of the road from which the allowance is reclaimed, unless specifically agreed by the interested roads to permit the presentation and acceptance of such reclaims by local representatives.

Rule 14 (Formerly Car Service Rule 10)
Old Car Service Rule 10

Original reading, adopted April 5, 1905:

10. When any freight car is detained on a road by reason of a railroad error, the Car Service charges which may have accrued against shipper or consignee during the time such car is held awaiting proper data shall be cancelled; and the erring road shall pay to the road holding the car for the time the car is held until sufficient data is received to release it, the rate established by the Per Deim Rules for freight cars.

Where Car Service Associations exist, the facts in the case shall be certified to the road upon which the per diem accrues by the manager of the Car Service Association, the claim against the erring road being made direct by the holding road.

Amended form, adopted October 30, 1907:

10. When any freight car is detained on the road by reason of a railroad error or omission, the demurrage charges which may have accrued against shipper or consignee during the time such car is held for such cause shall be cancelled; and the erring road shall pay to the road holding the car for the time the car is held the rate estab-

lished by the Per Diem Rules for freight cars, provided proper notice is promptly given.

At points covered by the rules of a Car Demurrage Bureau, the facts in the case shall be certified to the road upon which the per diem accrues by the manager of the Car Demurrage Bureau, the claim against the erring road being made direct by the holding road.

Amended form, adopted April 22, 1908:

10. When demurrage accrues by reason of a railroad error or omission on the part of other than the holding road, the erring road, upon admission of the error, must pay such demurrage to the holding road. If the demurrage charges have been collected from the shipper or consignee they will be refunded to such shipper or consignee by the holding road as soon as paid or authorized by the erring road.

When any freight car is detained by reason of a railroad error or omission, and no demurrage is assessed, the erring road shall pay to the holding road the rate established by the Per Diem Rules for freight cars for the time car is held.

At points covered by the rules of a Car Demurrage Bureau, the facts in the case shall be certified to the road upon which the demurrage accrued, by the manager of the Car Demurrage Bureau, the claim against the erring road to be made direct by the holding road. Prompt notice must be given and action taken by the holding road to secure the release of car.

Amended form, adopted November 15, 1911:

10. When demurrage accrues by reason of a railroad error or omission on the part of other than the holding road, the erring road, upon admission of the error, must pay such demurrage to the holding road. If the demurrage charges have been collected from the shipper or consignee they will be refunded to such shipper or consignee by the holding road as soon as paid or authorized by the erring road.

When any freight car, upon which per diem accrues, is detained by reason of a railroad error or omission, and no demurrage is assessed, the erring road shall pay to the holding road the rate established by the Per Diem Rules for freight cars for the time car is held.

At points covered by the rules of a Car Demurrage Bureau, the facts in the case shall be certified to the road upon which the demurrage accrued, by the manager of the Car Demurrage Bureau, the claim against the erring road to be made direct by the holding road. Prompt notice must be given and action taken by the holding road to secure the release of car.

Amended form, adopted November 20, 1912. Eliminated from Code of Car Service Rules and made Rule 14 of the Code of Per Diem Rules, March 1, 1920:

14. When a freight car is detained by reason of a railroad error, which prevents proper tender or delivery, prompt notice must be given and action taken by the holding road to secure the release of car, and the erring road will pay to the holding road an amount equal to the established per diem rate for the time such car is held. Claims under this rule to be made on the erring road within twelve months from the date succeeding that on which car is received. (See Rule 13, paragraph c.)

NOTE.—This rule applies only to cars of railroad ownership, including owner's cars on owner's tracks, but it does not apply to cars bunched in transit, nor cars detained account of weather interference.

Amended form, effective July 1, 1921:

14. When a freight car is detained by reason of a railroad error, which prevents proper tender or delivery, notice must be given and action taken by the holding road within five (5) days after arrival of the car, to secure release of car, and the erring road will pay to the holding road an amount equal to the established per diem rate for the time such car is held.

If holding road fails to give notice or to take action within five (5) days from the arrival of car, it will be allowed per diem for the first five (5) days, and in addition thereto per diem for each day from date notice is given until date disposition is furnished. Claims under this rule to be made on the erring road within twelve (12) months from the date succeeding that on which car is received. (See Rule 13, paragraph (c).)

NOTE.—This rule applies only to cars of railroad ownership, including owner's cars on owner's tracks, but it does not apply to cars bunched in transit, nor cars detained account of weather's interference.

Amended form, effective September 1, 1923:

14. Unless otherwise agreed, reclaim for per diem on a car held by reason of a railroad error shall be settled as follows:

On a Car Held at Junction Point Where Received:

(a) When a loaded freight car is delivered in interchange contrary to an embargo or without proper data for forwarding or disposition, or an empty freight car is delivered in error (except as provided in Rule 3 of the Code of Switching Reclaim Rules), the receiving road shall notify the delivering road immediately by telegram (or by telephone confirmed in writing), or by messenger in writing. Upon doing this, the receiving road may reclaim against the delivering road for the actual time intervening between the receipt of the car and receipt of proper data except that when notice is not given within the first forty-eight (48) hours, reclaim may only be made from date of notice.

(b) If the road delivering the car in error or without proper data orders it returned or delivered to another road, the receiving road may reclaim per diem accruing to the date of receipt of such order and in addition thereto the actual per diem not to exceed two (2) days accruing from receipt of order to date of delivery of car.

On a Loaded Car Held at Billed Destination:

(c) When a loaded freight car is held at billed destination, by reason of a railroad error, which prevents proper tender or delivery, telegraphic advice (or telephonic advice confirmed the same day by mail) sufficient to enable erring road to furnish correct information, must be sent by the holding road within five (5) days after arrival of car at station where held, to the agent at point of origin as indicated on the billing or to the proper officer of the originating road.

(d) If shipment was rebilled en route, the advice must be sent to the agent at the last rebilling station, or to the proper officer of the road on which shipment was last rebilled. If the rebilling road can not furnish proper disposal orders, it must transmit such advice by telegraph (or telephone, confirmed the same day by mail) within forty-eight (48) hours after receipt, to the agent at the point of origin or to the proper officer of the originating road.

(e) When more than one rebilling is involved, the procedure outlined above must be followed by each rebilling road until the error has been located. The erring road must then telegraph the proper information to the holding road.

(f) The road responsible for the error will pay to the holding road an amount equal to the established per diem rate from the date such car was received at the station where held to and including the date following that on which disposition is received by the holding road.

(g) If the holding road fails to send advice within five (5) days after arrival of the car it will be allowed per diem for the first five (5) days, and in addition thereto per diem for each day from date advice is sent to and including the date following that on which disposition is received by the holding road.

(h) If disposition is received by the holding road without notice having been sent, the holding road will be entitled to reclaim for the actual time car is held, with a maximum of five (5) days.

(i) When part of the detention is chargeable to a rebilling road, due to its failure to transmit advice within 48 hours after receipt, the erring road will be entitled to reclaim against such rebilling road for the number of days, in excess of two days, car was delayed due to its failure.

On a Loaded Car Held En Route on Orders Received From Another Road:

(j) When a loaded car is held en route on order received from another railroad, and such detention is due to railroad error, the holding road will be entitled to reclaim against the erring road an amount equal to the established per diem rate from the date car is held to and including the date following that on which disposition is received by the holding road.

(k) Reclaim under this rule shall be presented to the erring road within six (6) months from the last day of the month in which disposition is received by the holding road, except where demurrage adjustment is involved, in which case reclaim shall be presented within six (6) months from the last day of the month in which the demurrage is cancelled or refunded. See Rule 13, Paragraph (c).

NOTE.—This rule applies only to cars of railroad ownership, including owner's cars on owner's tracks, but it does not apply to cars bunched in transit, nor cars detained account of weather's interference.

Amended form, effective July 1, 1927:

Rule 14

Unless otherwise agreed, reclaim for per diem on a car held by reason of a railroad error shall be settled as follows:

Section 1. On a car held at any point en route to a billed destination, or customs port. (Billed destination or customs port, means any point within the switching limits thereof.)

(a) When a freight car is held at any point en route to billed destination or customs port by reason of a railroad error which prevents proper forwarding or proper tender or delivery, notice shall be sent or given by the holding road to the erring road, if known, or otherwise the delivering road or last rebilling road, prior to midnight of the second day after receipt of or arrival of car. Upon doing this, the holding road may reclaim against the erring road for an amount at the established per diem rate from receipt of car to and including receipt of proper data, and in addition thereto, an amount for actual detention, at the established per diem rate, not to exceed one (1) day from date of receipt of proper data to date of disposal of car. The return of the car to the delivering road prior to midnight of the second day after receipt, instead of holding car and notifying the delivering road, constitutes notice under this rule. If holding road neglects to send or give notice prior to midnight of the second day after receipt of or arrival of car, it will be entitled to reclaim only from the date such notice is sent or given.

(b) If the delivering road furnished necessary data for forwarding or orders the car returned or delivered to another road before the holding road takes action in accordance with Paragraph (a), the holding

road is entitled to the same reclaim as though it had requested disposition on the day the necessary instructions for disposition were received.

(c) When a loaded car is held en route on order received from another railroad, and such detention is due to railroad error, the holding road will be entitled to reclaim against the erring road, an amount equal to the established per diem rate from the date such car was received at the station where held to and including the date on which disposition is received by the holding road, and in addition thereto, an amount for actual detention at the established per diem rate not to exceed one (1) day from date of receipt of proper disposal order to date of disposal of car.

NOTE.—Cars delivered contrary to existing embargoes, empty cars delivered for home route in error, empty cars delivered for return loading in error, and cars delivered as empty which contain load or part load are subject to reclaim only when held within the switching limits of station where received.

Section 2. On a loaded car held at any point within the switching limits of billed destination or customs port.

(a) When a loaded freight car is held at any point within the switching limits of billed destination or customs port by reason of a railroad error which prevents proper tender or delivery, notice must be sent or given by the holding road prior to midnight of the fifth day after receipt of or arrival of the car to secure disposition of car, and upon doing this, the holding road may reclaim against the erring road for an amount at the established per diem rate from date such car was received at the station where held to and including the date on which disposition is received by the holding road, and in addition thereto an amount for actual detention at the established per diem rate not to exceed one day from date of receipt of proper data to date of disposal of car.

(b) If holding road neglects to send or give notice prior to midnight of the fifth day after receipt of or arrival of car, it will be allowed per diem for the first five (5) days, and in addition thereto, per diem for each day from date notice is sent or given to and including the date on which disposition is received, and in addition thereto, an amount for actual detention at the established per diem rate not to exceed one (1) day from date of receipt of proper data to date of disposal of car.

(c) The notice under Paragraphs (a) and (b) of this section shall be sent or given either to the delivering road, to the Agent at point of origin as indicated by the billing, or to the proper officer of the originating, last rebilling or reconsigning road, either by telegraph, by telephone confirmed in writing, the same day, or by messenger in writing, and must contain sufficient information to enable the erring road to furnish disposition.

Section 3. Errors involving non-subscriber railroads.

(a) When detention is caused by error of a non-subscriber, responsibility for per diem involved shall be assumed by the subscriber accepting the car from the non-subscriber.

The non-subscriber road shall be responsible to its subscriber connection for the per diem involved.

(b) When a car is held on non-subscriber railroad because of railroad error on the part of a subscriber the delivering subscriber shall relieve the non-subscriber of the per diem involved and may reclaim under this rule from the erring road.

NOTE.—Under this section the procedure covering notification, etc., prescribed in Sections 1 or 2 shall govern.

Section 4. Empty cars rejected by shipper:

When a car is delivered empty to a switching road for return loading and is returned empty to carrier road by reason of shippers' cancellation of order or rejection by shipper because unsuitable for loading as specified by the switching road when received from the carrier road, the switching road may reclaim against the carrier road, for an amount at the established per diem rate accruing from receipt of car to its return, but not to exceed three (3) days.

Section 5. On a car handled in terminal switching service:

The reclaim accruing under this rule on a car handled in terminal switching service, can only be made for the detention in excess of the reclaim allowable under Per Diem Rule 5.

Section 6. General.

(a) Under Sections 1, 2 and 3, when notice is sent or given to other than the known erring road and it is necessary for it to transmit the notice to the erring road or the road from which it received the car, such notice must be sent or given not later than the next calendar day following receipt of notice. This procedure must be followed by each road involved until the erring road has been notified. When part of the detention to the car is chargeable to the neglect of a road to so transmit notice, the erring road may reclaim from such road for the number of days in excess of one (1) that car was delayed due to such negligence.

(b) Rule 14 applies only to cars of railroad ownership handled on per diem basis, including owner's cars on owner's tracks, but it does not apply to cars bunched in transit, cars detained account of weather interference, or cars refused by consignee due to delay or damage in transit.

Amended form, adopted October 28, 1903; effective January 1, 1904:

12. The settlement of amounts accruing for the use of cars and reclaims under Rule 5 shall be made monthly without regard to reclaims pending under Rules 13, 14 and 15.

Amended form, effective March 1, 1920:

12. The settlement of amounts accruing for the use of cars shall be made monthly without regard to reclaims pending.

Rule 13

Original reading, adopted April 24, 1902; effective July 1, 1902:

13. When reclaims are made for allowances on account of special conditions they must be made by the designated transportation officer of the road which pays the per diem to the designated transportation officer of the road from which the allowance is reclaimed.

Amended form, adopted October 28, 1903; effective January 1, 1904:

13. When reclaims are made for allowances, under Rules 14 and 15, or on account of special conditions, they must be made by the designated transportation officer of the road which pays the per diem to the designated transportation officer of the road from which the allowance is reclaimed.

Amended form, adopted November 17, 1915; effective January 1, 1916:

13. Reclaims under Rules 5 and 14, or on account of special conditions, must be presented within one year from the last day of the month in which the per diem was earned.

This will not prevent the continuance of any reclaim after the period named, if it has been previously opened, even though the reclaim should eventually rest upon some road other than the one originally addressed, except that the privilege of continuance shall cease when the claimant fails to return the reclaim or present it to another road within a period of six months from date such claim is last returned to claimant.

Such reclaims must be made by the designated transportation officer of the road which pays the per diem to the designated transportation officer of the road from which the allowance is reclaimed, unless specifically agreed by the interested roads to permit the presentation and acceptance of such reclaims by local representatives.

Amended form, effective March 1, 1920:

13. (a) Switching reclaim under Rule 5 shall be presented within three months from the last day of the month in which the per diem accrued, and shall be allowed as presented within 30 days after receipt.

The road paying the reclaim may present a counter reclaim to adjust errors in the original reclaim statement, provided such counter

reclaim is presented within two months from the last day of the month in which the original was received.

The privilege of continuance of the counter reclaim shall cease when either road interested fails to return it to the other road within two months from the last day of the month in which it was last received, the delinquent road to be responsible for the unadjusted amount.

(b) Reclaim under Rule 15 shall be presented within six months from the last day of the month in which cars were delivered by the holding road. The road receiving reclaim shall check and present exceptions to the claimant within four months from the last day of the month in which the reclaim was received and shall allow in the next open Per Diem Report the amount not covered by exceptions.

The privilege of continuance of reclaim thereafter shall cease when either road interested fails to return it to the other within two months from the last day of the month in which it was last received, the delinquent road to be responsible for the unadjusted amount.

(c) Special reclaim shall be presented within twelve months from the last day of the month in which the per diem accrued. The road receiving reclaim shall check and present exceptions to the claimant within four months from the last day of the month in which the reclaim was received and shall allow in the next open Per Diem Report the amount not covered by exceptions.

The privilege of continuance of reclaim thereafter shall cease when either road interested fails to return it to the other within two months from the last day of the month in which it was last received, the delinquent road to be responsible for the unadjusted amount.

(d) The provisions of paragraphs (a), (b) or (c) will not prevent the continuance of any reclaim after the period named if it has been previously opened when the reclaim eventually rests upon some road other than the one originally addressed, except that the reclaim shall be presented to such other road within two months from the last day of the month, in which it was last received by claimant. Further handling shall be subject to the provisions of paragraphs (a), (b) and (c).

(e) If a road fails to adjust or handle a reclaim in accordance with this rule the claimant shall give notice thereof sufficient to establish its identity on the summary of its next Per Diem Report to the delinquent road, and if not adjusted or handled within thirty days thereafter may take credit for the unadjusted amount of such reclaim in its next Per Diem Report to the delinquent road.

(f) Reclaims shall be made by the designated officer of the road which pays the per diem to the designated officer of the road from which the allowance is reclaimed, unless specifically agreed by the interested roads to permit the presentation and acceptance of such reclaims by local representatives.

Amended form, effective July 1, 1921:

15. (a) A road failing to receive promptly from a connection cars on which it has laid no embargo, shall be responsible to the connection for the per diem on cars so held for delivery, including the home cars of such connection.

A road failing to receive promptly from a connection empty cars at home on its road, moving home under Car Service Rules, shall be responsible to the connection for double the per diem on such cars held for delivery after the first day for which reclaim is made.

(b) If such failure to receive shall continue for more than three days, the delinquent line shall thereafter in addition be responsible for the per diem on all cars wherever in transit which are thus held back for delivery.

(c) It shall be the duty of the connection intending to reclaim to notify the delinquent line daily, prior to midnight, through the designated representative at the point where cars are offered, of the total number of cars so held for it, and within 48 hours from midnight of the days cars are offered furnish the initials and numbers of the cars.

(d) When the hour at which the receiving road clears the interchange track is so late that the delivering road cannot place on interchange track before midnight, cars which it is holding for delivery, the receiving road shall be responsible for the per diem on such cars for the following day, subject to local agreement as to time required to make delivery.

Amended form, effective July 1, 1927:

Rule 15

(a) A road failing to receive promptly from a connection cars on which it has laid no embargo, shall be responsible to the connection for the per diem on cars so held for delivery, including the home cars of such connection.

A road failing to receive promptly from a connection empty cars at home on its road, moving home under Car Service Rules, shall be responsible to the connection for double the per diem on such cars held for delivery after the first day for which reclaim is made.

(b) If such failure to receive shall continue for more than three days, the delinquent line shall thereafter in addition be responsible for the per diem on all cars wherever in transit which are thus held back for delivery.

(c) It shall be the duty of the connection intending to reclaim to notify the delinquent line daily, prior to midnight, through the designated representative at the point where cars are offered, of the total number of cars so held for it, and within 48 hours from midnight of the day cars are offered furnish the initials and numbers of the cars.

(d) The reclaim accruing under this rule on a car handled in terminal switching service can only be made for the detention in excess of the reclaim allowable under Per Diem Rule 5.

(e) When the hour at which the receiving road clears the interchange track is so late that the delivering road cannot place on interchange track before midnight, cars which it is holding for delivery, the receiving road shall be responsible for the per diem on such cars for the following day, subject to local agreement as to time required to make delivery.

Rule 16 (Old Rule 15)

Original reading, adopted April 24, 1902; effective July 1, 1902:

15. When a road gives notice to a connection that for any reason it cannot accept cars in any specified traffic, thereby instituting an embargo, it should receive cars already loaded with such traffic at the time such notice is issued. If it does not receive such cars the road holding them may reclaim per diem from the road placing the embargo for the number of days such cars are held not exceeding the duration of the embargo.

After the date of the notice a road must not load or reconsign cars in such traffic to the road issuing the notice.

All such notices must be given by telegraph, by the embargoing road, to its immediate connection and by it transmitted as may be necessary.

Amended form, adopted October 30, 1907; effective January 1, 1908:

15. When a road gives notice to a connection that for any reason it cannot accept cars in any specified traffic, thereby instituting an embargo, it should receive cars already loaded with such traffic at the time such notice is issued, and cars loaded within twenty-four hours thereafter. If it does not receive such cars the road holding them may reclaim per diem from the road placing the embargo for the number of days such cars are held not exceeding the duration of the embargo.

Twenty-four hours after the date of the notice a road must not load or reconsign cars in such traffic to the road issuing the notice.

All such notices must be given by telegraph, by the embargoing road, to its immediate connection and by it transmitted as may be necessary.

Amended form, adopted November 18, 1908; effective July 1, 1909:

15. When a road gives notice to a connection that for any reason it cannot accept cars in any specified traffic, thereby instituting an embargo, it should receive cars already loaded with such traffic on the date such notice is issued, and cars loaded within twenty-four hours

thereafter. If it does not receive such cars the road holding them may reclaim per diem from the road placing the embargo for the number of days such cars are held not exceeding the duration of the embargo.

Twenty-four hours after the date of the notice a road must not load or reconsign cars in such traffic to the road issuing the notice.

Embargo notices must be sent by the embargoing road to its direct connection and by it transmitted as may be necessary. They must be sent or transmitted by and to a designated transportation officer by wire, with reference number, and confirmed by letter the same date. They must give the reason why the embargo is placed, and state whether cars in transit will be accepted. When transmitted, they must include the name of the road first placing the embargo, with date of issue.

Amended form, adopted November 17, 1909; *effective January* 1, 1910:

15. When a road gives notice to a connection that for any reason it cannot accept cars in any specified traffic, thereby instituting an embargo, it should receive cars already loaded* with such traffic on the date such notice is issued, and cars loaded* within twenty-four hours thereafter. If it does not receive such cars the road holding them may reclaim per diem from the road placing the embargo for the number of days such cars are held not exceeding the duration of the embargo.

Twenty-four hours after the date of the notice a road must not load or reconsign cars in such traffic to the road issuing the notice.

Embargo notices must be sent by the embargoing road to its direct connection and by it transmitted as may be necessary. They must be sent or transmitted by and to a designated transportation officer by wire, with reference number, and confirmed by letter the same date. They must give the reason why the embargo is placed, and state whether cars in transit will be accepted. When transmitted, they must include the name of the road first placing the embargo, with date of issue.

Amended form, adopted May 20, 1914; *effective August* 1, 1914:

15. When a road gives notice to a connection that for any reason it cannot accept cars in any specified traffic, thereby instituting an embargo, it should receive cars already loaded* with such traffic on the date such notice is issued, and cars loaded* within twenty-four hours thereafter. If it does not receive such cars the road holding them may reclaim per diem under Rule 14 from the road placing the embargo for the number of days such cars are held not exceeding the duration of the embargo.

Twenty-four hours after the date of the notice a road must not load or reconsign cars in such traffic to the road issuing the notice.

*NOTE.—The date of loading to be determined from the data accompanying the car.

Embargo notices must be sent by the embargoing road to its direct connection and by it transmitted as may be necessary. They must be sent or transmitted by and to a designated transportation officer by wire, with reference number, and confirmed by letter the same date. They must give the reason why the embargo is placed, and state whether cars in transit will be accepted. When transmitted, they must include the name of the road first placing the embargo, with date of issue.

No embargo may be placed on empty cars returning home in accordance with the Car Service Rules.

Amended form, adopted November 17, 1915; effective January 1, 1916:

15. When a road gives notice to a connection that for any reason it cannot accept cars in any specified traffic, thereby instituting an embargo, it should receive cars already loaded* with such traffic on the date such notice is issued, and cars loaded* within twenty-four hours thereafter. If it does not receive such cars the road holding them may reclaim per diem under Rule 14 from the road placing the embargo for the number of days such cars are held not exceeding the duration of the embargo.

Twenty-four hours after the date of the notice a road must not load or reconsign cars in such traffic to the road issuing the notice.

Embargo notices must be sent by the embargoing road to its direct connection. They must be sent to a designated officer by wire, with reference number, and confirmed by letter the same date. They must give the reason why the embargo is placed, and state whether cars in transit will be accepted.

No embargo may be placed on empty cars returning home in accordance with the Car Service Rules.

Amended form, changed to Rule 16; effective March 1, 1920:

16. (a) When a road gives notice that for any reason it cannot accept cars in any specified traffic, thereby laying an embargo, it should receive cars already loaded* with such traffic on the date such notice is issued, and cars loaded* within twenty-four (24) hours thereafter. If it does not receive such cars the road holding them may reclaim per diem under Rule 15 from the road laying the embargo for the number of days such cars are held, not exceeding the duration of the embargo.

(b) Embargoes must be issued by the embargoing road in accordance with the provisions of the Embargo Regulations as approved by the American Railway Association.

(c) Twenty-four hours after 11:59 p. m. of the date of the embargo a road must not load or reconsign cars in such traffic to the embargoing road.

(d) An embargo may not be laid on empty cars returning home in accordance with the Car Service Rules.

*NOTE—The date of loading to be determined from the data accompanying the car.

Amended form, effective March 1, 1924:

(a) When a road gives notice that for any reason it cannot accept cars in any specified traffic, thereby laying an embargo, it should receive cars already loaded† with such traffic on the date such notice is issued, and cars loaded† within forty-eight (48) hours thereafter. If it does not receive such cars the road holding them may reclaim per diem under Rule 15 from the road laying the embargo for the number of days such cars are held, not exceeding the duration of the embargo.

(b) Embargoes must be issued by the embargoing road in accordance with the provisions of the Embargo Regulations as approved by the American Railway Association.

(c) Forty-eight hours after 11:59 p. m. of the date of the embargo a road must not load or reconsign cars in such traffic to the embargoing road.

(d) An embargo may not be laid on empty cars returning home in accordance with the Car Service Rules.

Amended form, effective January 1, 1926:

(a) When a road gives notice that for any reason it cannot accept cars in any specified traffic, thereby laying an embargo, it should receive cars already loaded§ with such traffic on the date such notice is issued, and cars loaded§ within forty-eight (48) hours thereafter. If it does not receive such cars the road holding them may reclaim per diem under Rule 15 from the road laying the embargo for the number of days such cars are held, not exceeding the duration of the embargo.

(b) Embargoes must be issued by the embargoing road in accordance with the provisions of the Embargo Regulations* as approved by the American Railway Association.

(c) Forty-eight (48) hours after 11:59 p. m. of the date of the embargo a road must not load, or permit to be loaded, cars in such traffic; nor accept orders to divert or reconsign cars already loaded.

(d) An embargo may not be laid on empty cars returning home in acordance with the Car Service Rules.

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†NOTE—The date of loading to be determined from the data accompanying the car.

§NOTE.—The date of loading, diversion or reconsignment to be determined from the data accompanying the car.

*Embargo Regulations effective January 1, 1926, are shown on pages 52 to 54.

Rule 17

Original reading, adopted April 24, 1902; effective July 1, 1902:

17. To interpret these rules and to settle disputes arising under them an Arbitration Committee of five members shall be appointed by the Committee on Car Service. Three members of the Arbitration Committee shall be a quorum.

In case any question or dispute arises under these rules it may be submitted to the Arbitration Committee through the Secretary of the Association in abstract. The abstracts shall briefly set forth the points at issue and each party's interpretation of the rules upon which its claim is based. The Arbitration Committee shall base its decisions upon the rules and the abstract submitted, and its decision shall be final. Should one of the parties refuse to furnish the necessary information, the Arbitration Committee shall use its judgment as to whether it can properly decide. All decisions shall be reported to the Association through the Committee on Car Service.

In case a question shall arise not covered by the rules the roads disagreeing may by mutual consent submit such questions to the Arbitration Committee.

The Committee on Car Service may appoint a secretary for the Arbitration Committee, who shall be paid by the Association. The other expenses of the Arbitration Committee shall be divided equally between each of the parties to the dispute and the Association. The expenses shall be first paid by the Association and then billed to the parties concerned by the Treasurer of the Association.

Amended form, adopted October 28, 1903; effective January 1, 1904:

17. To interpret these rules and to settle disputes arising under them an Arbitration Committee of five members shall be appointed by the Committee on Car Service. Three members of the Arbitration Committee shall be a quorum.

In case any question or dispute arises under these rules it may be submitted to the Arbitration Committee through the Secretary of the Association in abstract. The abstract shall briefly set forth the points at issue and each party's interpretation of the rules upon which its claim is based. The Arbitration Committee shall base its decisions upon the rules and the abstract submitted, and its decision shall be final. Should one of the parties refuse to furnish the necessary information, the Arbitration Committee shall use its judgment as to whether it can properly decide. All decisions shall be reported to the Association through the Committee on Car Service.

"In case a question shall arise not covered by the rules the roads disagreeing may by mutual consent submit such questions to the Arbitration Committee.

The Committee on Car Service may appoint a secretary for the Arbitration Committee, who shall be paid by the Association. The

other expenses of the Arbitration Committee shall be divided equally between each of the parties to the dispute and the Association. The minimum charge to each road shall be $10, payable in advance. The expenses shall be first paid by the Association and then billed to the parties concerned by the Treasurer of the Association.

Amended form, effective March 1, 1920:

17. To interpret these rules and to settle disputes arising under them an Arbitration Committee of five members shall be appointed by the General Committee, Section V†—Transportation. Three members of the Arbitration Committee shall be a quorum.

In case any question or dispute arises under these rules it may be submitted to the Arbitration Committee through the General Secretary of the Association in abstract. The abstracts shall briefly set forth the points at issue and each party's interpretation of the rules upon which its claim is based. The Arbitration Committee shall base its decisions upon the rules and the abstract submitted, and its decisions shall be final. Should one of the parties refuse to furnish the necessary information, the Arbitration Committee shall use its judgment as to whether it can properly decide. All decisions shall be reported to the Association through the General Committee, Section V†—Transportation.

In case a question shall arise not covered by the rules the roads disagreeing may by mutual consent submit such questions to the Arbitration Committee.

The General Committee, Section V†—Transportation, may appoint a Secretary for the Arbitration Committee, who shall be paid by the Association. The other expenses of the Arbitration Committee shall be divided equally between each of the parties to the dispute and the Association. The minimum charge to each road shall be $10, payable in advance. The expenses shall be first paid by the Association, and then billed to the parties concerned by the Treasurer of the Association.

Old Rule 18

Adopted November 16, 1910; *effective January* 1, 1911; *eliminated December* 3, 1913.

18. When cars are held by a road for delivery within a switching district and cannot be received by the switching line owing to the disability of the consignee, notice must be promptly given by the switching line to the road holding the car, in order that it may give notice to the consignee.

The agent of the holding road will give prompt notice as per Car Demurrage Rule 2 (b)-1 and Explanation thereto.

When demurrage is charged the road holding the car cannot reclaim under Per Diem Rules 14 or 15.

†Changed to read Division II—Transportation in reprint of Code, July 1, 1921.

Rule 16 (Old Rule 16)

Original reading Rule 16, adopted April 24, 1902; effective July 1, 1902:

16. These rules shall not apply to private cars.

Amended form, adopted May 20, 1914; effective May 30, 1914, and changed to Rule 18, March 1, 1920:

18. These rules shall not apply to private cars or to cars of non-subscribers.

Rule 19

Adopted May 15, 1912; paragraphs 1, 2, 3, 4 and 7 effective July 1, 1912; paragraphs 5 and 6 effective September 1, 1912:

19. (1) The Executive Committee of the American Railway Association shall appoint a Commission for the purpose of supervising the observance of Car Service Rules 1, 2, 3 and 4 governing the handling of freight cars.

(2) The Commission, through its duly authorized representatives, shall be empowered to examine the records of any carrier for the purpose of determining the merits of complaints filed with the Commission under the following conditions:

(3) Any railroad, after due notice to offending line of its intention to do so, may refer to the Commission cases of persistent delay or apparent persistent misuse of its cars.

(4) It shall be the duty of the Commission to make, through its authorized representatives, such investigations as may in its judgment be necessary to determine facts.

(5) Based upon the facts developed by the investigation, it shall then be within the power of the Commission to impose a money fine, the minimum of which shall be $2.00 for each violation, such fine to be paid to the car owner, and to be in addition to Per Diem accrued and expense incurred incident to the investigation.

(6) In the event the case presented is not proven, the expense of the investigation shall be paid by the complainant.

(7) The Commission shall not consider a case unless presented within 90 days from date of first alleged violation, nor shall the investigation extend back of a period of 90 days from date of filing of complaint with the Commission, nor prior to the adoption of these rules.

Amended form, adopted November 17, 1915; effective January 1, 1916:

19. (1) The Executive Committee of the American Railway Association shall appoint a Commission for the purpose of enforcing the observance of Car Service Rules 1, 2, 3 and 4, governing the handling of freight cars.

(2) The Commission, through its duly authorized representatives, shall be empowered to examine the records of carriers for the purpose of determining the merits of complaints filed with the Commission.

(3) Any railroad, after notice to offending line of its intention to do so, may refer to the Commission any case or cases of violation of these rules.

(4) It shall be the duty of the Commission to conduct such investigation as may in its judgment be necessary to determine the facts, and it shall then be within the power of the Commission to impose a penalty, the minimum of which shall be $2.00 for each violation, such penalty to be paid to the American Railway Association in addition to the expense incurred incident to the investigation.

(5) In the event the case presented is not proven, the expense of the investigation shall be paid by the complainant.

(6) The Commission shall not consider a case unless presented within 90 days from date of first alleged violation, nor shall the investigation extend back of a period of 90 days from date of filing of complaint with the Commission, nor prior to the adoption of these rules.

Amended form, adopted May 17, 1916; *effective June* 1, 1916:

19. (1) The Executive Committee of the American Railway Association shall appoint a Commission for the purpose of enforcing the observance of Car Service Rules 1, 2, 3 and 4, governing the handling of freight cars.

(2) The Commission, through its duly authorized representatives, shall be empowered to examine all records of members of the Per Diem Rules Agreement, and it shall have authority to institute proceedings against member lines for violation of said rules, either on its own initiative or on complaints filed with it.

(3) It shall be the duty of the Commission to conduct such investigation as may in its judgment be necessary to determine the facts, and it shall then be within the power of the Commission to impose a penalty, the minimum of which shall be $2.00 for each violation, such penalty to be paid to the American Railway Association in addition to the expense incurred incident to the investigation.

(4) Any railroad, after notice to offending line of its intention to do so, may refer to the Commission any case or cases of violation of these rules.

(5) In the event the case presented is not proven, the expense of the investigation shall be paid by the complainant.

(6) The Commission shall not consider a case unless presented within 90 days from date of first alleged violation, nor shall the investigation extend back of a period of 90 days from the date of filing of complaint with the Commission, nor prior to the adoption of these rules.

Amended form, adopted November 15, 1916; *effective December* 1, 1916:

19. (1) The Executive Committee of the American Railway Association shall appoint a Commission authorized—

(a) To increase the per diem rate for a specified period in times of car shortage; but the Commission shall in no case set the rate at a

figure above the maximum rate named in Per Diem Rule 1, nor give less than thirty days' notice of any change in the rates.

Subject to the above limitation the per diem rates may differ (1) as between open and closed cars, and (2) as between Official, Southern and Western Classification territory.

(b) To enforce the observance of Car Service Rules 1, 2, 3 and 4, governing the handling of freight cars.

(c) To suspend the diversion penalty specified in Per Diem Rules 3 in times of car surplus, or when in its opinion such action is desirable.

(2) The Commission, through its duly authorized representatives, shall be empowered to examine all records of members of the Per Diem Rules Agreement, and it shall have authority to institute proceedings against member lines for violations of said rules, either on its own initiative or on complaints filed with it.

(3) It shall be the duty of the Commission to conduct such investigation as may in its judgment be necessary to determine the facts.

If the Commission shall find that a diversion has been made without being reported, as required under Per Diem Rule 3, it shall impose a penalty of $10 for each such diversion. One-half to go to the owner of the car diverted; one-half to the American Railway Association.

(4) Any railroad, after notice to offending line of its intention to do so, may refer to the Commission any case or cases of violation of these rules.

(5) In the event the case presented is not proven, the expense of the investigation shall be paid by the complainant.

(6) The Commission shall not consider a case unless presented within 90 days from date of first alleged violation, nor shall the investigation extend back of a period of 90 days from date of filing of complaint with the Commission, nor prior to the adoption of these rules.

Amended form, promulgated by the Commission on Car Service January 31, 1917; effective February 21, 1917:

(19.) (I) The Executive Committee of the American Railway Association shall appoint a Commission authorized—

(a) To increase the per diem rate for a specified period in times of car shortage; but the Commission shall in no case set the rate at a figure above the maximum rate named in Per Diem Rule 1, nor give less than thirty days' notice of any change in the rates.

(b) To enforce the observance of Car Service Rules 1, 2, 3 and 4, governing the handling of freight cars.

(II) The Commission, through its duly authorized representatives, shall be empowered to examine all records of members of the Per Diem Rules Agreement, and it shall have authority to institute pro-

Rule 15 (Old Rule 14)

Original reading, adopted April 24, 1902; effective July 1, 1902:

14. When a road refuses or fails to promptly receive from a connection cars upon which it has laid no embargo, it shall be responsible to the connection for the per diem on cars so held for delivery, including the per diem on the home cars of such connection. If such refusal or failure to receive shall continue for more than three days, the delinquent line shall thereafter in addition be responsible for the per diem on all cars in transit which are thus held back for delivery. It shall be the duty of a connection intending to reclaim such per diem allowance to notify the delinquent line daily of the total number of cars so held for it.

Amended form, adopted October 28, 1903; effective January 1, 1904:

14. A road failing to receive promptly from a connection cars upon which it has laid no embargo, shall be responsible to the connection for the per diem on cars held for delivery, including the home cars of such connection.

If such failure to receive shall continue for more than three days, the delinquent line shall thereafter in addition be responsible for the per diem on all cars wherever in transit which are thus held back for delivery.

It shall be the duty of a connection intending to reclaim such per diem allowance to notify the delinquent line daily of the total number of cars so held for it, and, when required, to furnish the initials and numbers of the cars.

Amended form, adopted May 19, 1915; effective July 1, 1915:

14. (a) A road failing to receive promptly from a connection cars upon which it has laid no embargo, shall be responsible to the connection for the per diem on cars held for delivery, including the home cars of such connection.

(b) A road failing to receive promptly from a connection empty cars at home on its road, moving home under Car Service Rules, shall be responsible to the connection for double the per diem on such cars held for delivery after the first day for which reclaim is made.

(c) If such failure to receive shall continue for more than three days, the delinquent line shall thereafter in addition be responsible for such per diem on all cars wherever in transit which are thus held back for delivery.

(d) It shall be the duty of a connection intending to reclaim such per diem allowance to notify the delinquent line daily of the total number of cars so held for it, and when required, to furnish the initials and numbers of the cars.

Amended form, adopted November 17, 1915; effective January 1, 1916:

14. (a) A road failing to receive promptly from a connection cars on which it has laid no embargo, shall be responsible to the connection for the per diem on cars so held for delivery, including the home cars of such connection.

(b) A road failing to receive promptly from a connection empty cars at home on its road, moving home under Car Service Rules, shall be responsible to the connection for double the per diem on such cars held for delivery after the first day for which reclaim is made.

(c) If such failure to receive shall continue for more than three days, the delinquent line shall thereafter in addition be responsible for such per diem on all cars wherever in transit which are thus held back for delivery.

(d) It shall be the duty of a connection intending to reclaim to notify the delinquent line daily, prior to midnight, through the designated transportation officer or in such manner as may be agreed upon locally, of the total number of cars so held for it, and on the following day furnish the initials and numbers of the cars.

(e) When the hour at which the receiving road clears the interchange track is so late that the delivering road cannot place on interchange track before midnight cars which it is holding for delivery, the receiving road shall be responsible for the per diem on such cars for the following days, subject to local agreement as to time required to make delivery.

Changed to Rule 15; amended form, effective March 1, 1920:

15. (a) A road failing to receive promptly from a connection cars on which it has laid no embargo, shall be responsible to the connection for the per diem on cars so held for delivery, including the home cars of such connection.

(b) If such failure to receive shall continue for more than three days, the delinquent line shall thereafter in addition be responsible for the per diem on all cars wherever in transit which are thus held back for delivery.

(c) It shall be the duty of the connection intending to reclaim to notify the delinquent line daily, prior to midnight, through the designated transportation officer or in such manner as may be agreed upon locally, of the total number of cars so held for it, and on the following day furnish the initials and numbers of the cars.

(d) When the hour at which the receiving road clears the interchange track is so late that the delivering road can not place on interchange track before midnight, cars which it is holding for delivery, the receiving road shall be responsible for the per diem on such cars for the following day, subject to local agreement as to time required to make delivery.

REGULATIONS GOVERNING PLACING AND HANDLING OF EMBARGOES

Effective January 1, 1926

1. An embargo is a method of controlling traffic movements when accumulations, threatened congestions or other interferences with operation of a temporary nature compel restrictions against traffic movements.

(a) Embargoes should be placed against consignees who fail to unload or otherwise dispose of freight promptly upon arrival.

(b) Embargoes must not be placed at request of consignees.

2. An embargo shall not be used to control the routing of traffic to or via any particular gateway or line when for the purpose of giving the embargoing road a longer haul.

3. A railroad shall promptly place its own embargo restrictions rather than to wait for such action by its connection when such connection is offering traffic in excess of ability of such receiving road to currently accept.

(a) "Hold" orders shall not be placed against connections (except in cases of sudden physical disability) to control general movements of traffic for a period longer than twenty-four (24) hours and shall not be extended. When necessary to restrict the movement of traffic for periods in excess of twenty-four (24) hours, this should be accomplished by means of an embargo.

4. An embargo shall not be used as a permanent measure to control traffic movements when possible to regulate by tariff.

5. An embargo against less-than-carload freight which specifies minimum weight limits per car is prohibited.

6. In placing embargoes, and when other than a complete embargo is placed, there shall be uniformity in exemptions. These exemptions shall include, so far as practicable, the items listed in attached memorandum (a) to (h) inclusive, and in the order named. (See note.)

7. Permits: Congestions, or interference with normal movement of traffic, at terminals, or in areas where difficulty is found in the prompt release of freight car equipment by reason of an abnormal

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NOTE TO ITEM 6.—When other than an absolute embargo is placed, exemptions should include as many of items quoted below as circumstances warrant, and in the order named so far as practicable.

flow of traffic, it is believed may best be relieved by an embargo, which shall be promptly issued and continued in effect so long as necessary to reduce the volume awaiting delivery to a normal amount. Such embargoes shall exempt only those actual commodities which are necessary to meet the public need at the point involved.

Where a permit system is used, it shall be established in such a way as to protect the shipping public against undue discrimination and should be confined:

(a) To the acceptance of grain and other freight for export or water movement when to meet definite steamer commitment.

(b) To the control when and where necessary of the flow of perishable traffic to markets subject to congestion, and

(c) To such other emergency situations as may arise when there is no question as to the public necessity for special transportation relief. Copies of permits issued under this rule shall be sent promptly and currently to the Chairman of the Car Service Division, Washington, D. C., with information to show reasons for the issuance of such permits.

8. An embargo shall be given effective distribution by carriers to the extent necessary to stop further loading or forwarding of traffic in conflict with intent of embargo.

9. An embargo when transmitted to the Zone Chairman then becomes the embargo of all roads in the district within which such Zone Chairman has jurisdiction over embargo distribution.

10. Embargoes and extensions of embargoes will become effective forty-eight (48) hours after 11:59 p. m. of date of issue, in accordance with Per Diem Rule 16.

11. Interchange of embargoes between railroads will be handled in accordance with instructions issued by the Car Service Division, who shall also supervise the application of the rules, regulations and instructions governing the handling of embargoes.

CODE WORD:

Embank (a) Livestock, live poultry, perishable. NOTE: Perishables shall be listed by the Car Service Division for uniform understanding and application.

Embassy (b) Coal, coke and charcoal. Petroleum and its products.

Embed (c) Food, domestic (not export), for human consumption (as listed by the Car Service Division), including wheat, corn, oats, rye, barley, rice, cereal products, salt, canned goods, sugar, and lard substitutes. Feed, domestic (not export), for animals and poultry, not including hay and straw.

Emblem (d) Printing paper and printing ink.

Embody (e) Railroad material and supplies (other than coal or coke) consigned to an officer of the purchasing road at a point on such road.

Materials and supplies consigned to locomotive and car manufacturers for the construction and repair of locomotives and freight and passenger cars.

Embold (f) Fluxing stone and materials for blast furnaces.

Supplies for coal mines, oil refineries and oil and gas wells.

Emboss (g) Field and garden seeds, seed grain, nursery stock.

Spraying materials, insecticides and implements for use thereof.

Agricultural implements and farm machinery required for preparing the soil.

Canning machinery.

Fertilizer or fertilizer materials, including agricultural lime, pulverized limestone and phosphate rocks.

Embrace (h) Acids, alcohol, ammonia, ammoniacal liquor.

Empty tank cars, empty metal, glass or jacketed oil, acid, gas or ammonia containers, ink drums; food and medicine containers.

Liquid chlorine, alum, sulphate of iron, and similar chemicals when to be used for purification of water supply and when consigned to municipal authorities.

Medicines, drugs, surgical instruments and surgical dressings, hospital and sick room supplies.

Tin plate for the manufacture of food containers.

Heating apparatus.

CAR SERVICE RULES 1 to 5, INCLUSIVE.

1. Home cars shall not be used for the movement of traffic beyond the limits of the home road when the use of other suitable cars under these rules is practicable.

2. Foreign cars at home on a direct connection must be forwarded to the home road loaded or empty except as provided in paragraphs (e) and (f). If empty at junction with the home road and loading at that point via the home road is not available they must (subject to Rule 5) be delivered to it at that junction, unless an exception to the requirement be agreed to by roads involved. Otherwise, cars under this rule may be—

(a) Loaded via any route so that the home road will participate in the freight rate, or

(b) Moved locally in the direction of the home road, or

(c) Moved locally in an opposite direction from the home road, or delivered to a short line or a switching road, if to be loaded for delivery on or movement via the home road, or

(d) Delivered empty to home road at any junction point, subject to Rule 5, or

(e) Delivered empty to road from which originally received under load at the junction where received, if such road is also a direct connection of the home road, or

(f) Returned empty to the delivering road when handled in switching service and owner is not a direct connection in that switching territory.

3. Foreign cars at home on other than direct connections must be forwarded to the home road loaded or empty. Under this rule cars may be—

(a) Loaded via any route so that the home road will participate in the freight rate, or

(b) Loaded in the direction of the home road, or

(c) Moved locally in an opposite direction from the home road, or delivered to a short line or a switching road if to be loaded for delivery on or movement via the home road, or to a point in the direction of the home road, beyond the road on which the cars are located, or

(d) Delivered empty to road from which originally received, at the junction where received, if impracticable to dispose of them under paragraph (a), (b) or (c) of this rule.

4. Empty cars may be short routed at a reciprocal rate of 6 cents per mile, plus bridge and terminal arbitraries, with a minimum of 100 miles for each road handling the car, the road requesting the service to pay the charges.

5. If a movement of traffic requires return of empty cars to home road via the junction at which cars were delivered in interchange under load, the home road may demand return of empty cars at such junction, except that cars offered a home road for repairs, in accordance with Division V—Mechanical (M. C. B.) Rules, must be accepted by owners at any junction point.

NOTE TO RULE 5.—Notice of an intent on the part of any road to invoke the provisions of this rule should be issued by the designated transportation officer to the designated transportation officer of the road to which the notice is addressed, such notice to specify the type of cars and particular junction points involved.

Such notice may not limit acceptance to the individual cars previously delivered, but may require the return of an equivalent number of home cars of the type specified, at junction point where delivered loaded.

NOTES—(A) Car Service Rules 1 to 5, inclusive, do not apply to cars reconsigned with original lading under duly filed and published tariffs.

(B) All roads interchanging cars at a common point, or within switching limits over their own lines, or an intermediate line or lines, or a car ferry or float within such limits, shall be considered Direct Connections under Rule 2.

(C) The Board of Directors of the American Railway Association shall decide as to roads which may be classified as "Short Line" roads under these rules.

CODE OF SWITCHING RECLAIM RULES.

Recommended practice, May 18, 1910 to March 1, 1923.

Made a part of Per Diem Rule 5, effective March 1, 1923.

INTRODUCTORY PARAGRAPH.

Original reading, adopted May 18, 1910:

Rules governing the settlement of switching reclaims at points where The American Railway Association Per Diem Rule 5, quoted below, is effective:

"An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory."

Amended form, adopted May 20, 1914:

Rules governing settlement of switching reclaims, which should be a part of any local agreements, entered into under the provisions of The American Railway Association Per Diem Rule 5, quoted below:

"An arbitrary amount for each car in switching service may be reclaimed by each individual switching line from the roads for which the service was performed. This amount shall be based upon the average number of days, not to exceed five, actually required in such switching service, to be determined annually by an examination of the records of each individual switching line by the roads directly interested for each local territory.

"No reclaim shall be allowed for an intermediate switching movement.

"No reclaim shall be allowed under this rule to a non-subscriber."

Amended form, effective March 1, 1923 (*Eliminated from the Code effective July* 1, 1927):

These rules shall govern in the settlement of switching reclaims provided for in American Railway Association Per Diem Rule No. 5, which reads as follows:

"5. (a). An amount for each car in switching service may be reclaimed by each individual switching road from the road for which the service was performed. This amount shall be based upon the average number of days, not to exceed five (5),

for cars handled in Terminal Switching Service except as otherwise provided in paragraph (b), actually required in such switching service to be determined annually, or at such other periods as may be agreed upon by the roads interested, by an examination of the records of each individual switching road, by the roads interested, for each local territory, except that roads in any local territory may agree to the settlement of terminal switching reclaims on the basis of actual time involved in handling the cars during the month for which the reclaim is made, subject to an agreed maximum number of days on any one car, the reclaim on pick-up and diverted cars shall be determined by a plan to be agreed upon by the interested roads, and the total reclaim for any month shall not exceed an average of five (5) days per car."

"(b) An amount equal to the actual per diem accruing on each car loaded with live stock handled in switching service (but not including cars loaded with emigrant movables or exhibition live stock, which are subject to Section (a) of this rule) may be reclaimed by each individual switching road from the road for which the service was performed, provided that such reclaim shall not exceed one (1) day on any one car."

"(c) No reclaim shall be allowed for an intermediate switching movement."

"(d) No reclaim shall be allowed for an inter-terminal switching movement."

"(e) No reclaim shall be allowed to a non-subscriber."

"(f) Unless otherwise unanimously agreed to by the interested roads, the Code of Switching Reclaim Rules of the American Railway Association shall govern in determining switching reclaim allowances."

Introductory paragraph eliminated from the code, effective July 1, 1927.

DEFINITIONS.

Terminal Switching Roads

Original reading, adopted May 18, 1910:

A terminal switching road is a road on whose rails (or upon private tracks connecting therewith) a car (received from connecting line) is unloaded, or on whose rails (or upon private tracks connecting therewith) a car (delivered to connecting line) destined to a point beyond the switching limits, is loaded, the service performed being within the designated switching limits and on a switching charge.

Amended form, adopted May 20, 1914:

A terminal switching road is a road on whose rails (or upon private tracks connecting therewith):

(1) A car received from connecting line loaded is unloaded.

(2) A car is loaded and delivered to a connecting line destined to a point beyond the switching limits.

The service performed being within the designated switching limits and on a switching charge.

Amended form, effective March 1, 1923:

A terminal switching road is a road on whose rails, or on private tracks connecting therewith:

(a) A car received from a carrier road, either direct or through an intermediate road, is unloaded, reconsigned or reshipped.

(b) A car is loaded, reconsigned or reshipped, and delivered to a carrier road, either direct or through an intermediate road.

The service performed being within the designated switching limits, the road performing the service not participating in the freight rate.

Amended form, effective July 1, 1927:

A terminal switching road is a road on whose rails, or on private tracks connecting therewith:

(a) A car received from a carrier road, either direct or through an intermediate road, is unloaded, reconsigned or reshipped.

(b) A car is loaded, reconsigned or reshipped, and delivered to a carrier road, either direct or through an intermediate road.

The service performed being within the designated switching limits and at a switching charge.

Intermediate Switching Roads

Original reading, adopted May 18, 1910:

An intermediate switching road is a road handling a car from one railroad to another railroad, the service performed being within the designated switching limits and on a switching charge.

Amended form, effective March 1, 1923:

An intermediate switching road is a road handling a car from one railroad to another railroad within the designated switching limits, the road performing the service not participating in the freight rate.

Carrier Roads

Original reading, adopted May 18, 1910:

A carrier road is a road delivering a loaded car to a terminal switching road (either direct or through an intermediate switching road) for unloading, or an empty car for return loading destined to a point beyond the switching limits, or to another carrier road (through an intermediate switching road), i.e., the road participating in the freight rate on the inbound or outbound load as the case may be.

Note.—A road loading a car from a point in the switching limits to a point in the switching limits stands in the relation of a carrier road to the terminal switching road and to the intermediate switching road or roads.

Amended form, adopted Nov. 17, 1915:

A carrier road is a road delivering a loaded car to a terminal switching road (either direct or through an intermediate switching road) for unloading, or an empty car for return loading destined to a point beyond the switching limits, of to another carrier road (through an intermediate switching road), i.e., the road participating in the freight rate on the inbound or outbound load as the case may be.

Amended form, effective March 1, 1923:

A carrier road is—

(a) A road which, participating in the freight rate on the inbound shipment, delivers a car to a terminal switching road, either direct or through an intermediate switching road, for unloading, reconsigning or reshipping.

(b) A road which, participating in the freight rate on the outbound shipment, receives a car from a terminal switching road, either direct or through an intermediate switching road, that has been loaded, reconsigned or reshipped by the terminal switching road.

Switching Service

Original reading, adopted May 18, 1910:

Switching service is defined as follows:

(A) Terminal Switching.
(B) Intermediate Switching.

(A) Terminal Switching.

Terminal switching is that performed by the road on whose rails (or upon private tracks connecting therewith) a car (received from connecting line) is unloaded, or on whose rails (or upon private tracks connecting therewith) an empty car (delivered to connecting line) destined to a point beyond the switching limits, is loaded, the service performed being within the designated switching limits and on a switching charge.

(B) Intermediate Switching.

Intermediate switching is that performed by the road handling a car from one railroad to another railroad, the service performed being within the designated switching limits and on a switching charge.

Amended form, adopted May 20, 1914:

Switching service is defined as follows:

(A) Terminal Switching.
(B) Intermediate Switching.

(A) Terminal Switching.

Terminal switching is that performed by the road on whose rails (or upon private tracks connecting therewith):

(1) A car received from connecting line loaded is unloaded.

(2) A car is loaded and delivered to a connecting line destined to a point beyond the switching limits.

The service performed being within the designated switching limits and on a switching charge.

(B) Intermediate Switching.

Intermediate switching is that performed by the road handling a car from one railroad to another railroad, the service performed being within the designated switching limits and on a switching charge.

Amended form, adopted Nov. 17, 1915:

Switching service is defined as follows:

(A) Terminal Switching.
(B) Intermediate Switching.
(C) Intra-terminal Switching.

(A) Terminal Switching.

Terminal switching is that performed by the road on whose rails (or upon private tracks connecting therewith):

(1) A car received from connecting line loaded is unloaded.

(2) A car is loaded and delivered to a connecting line destined to a point beyond the switching limits.

The service performed being within the designated switching limits and on a switching charge.

(B) Intermediate Switching.

Intermediate switching is that performed by the road handling a car from one railroad to another railroad, the service performed being within the designated switching limits and on a switching charge.

(C) Intra-terminal Switching.

A car loaded within the switching limits for unloading within the same switching limits.

Amended form, adopted March 1, 1923:

Switching service is defined as follows:

(a) Terminal Switching Service.

The service performed by a terminal switching road, as defined in these rules.

(b) Intermediate Switching Service.

The service performed by an intermediate switching road, as defined in these rules.

(c) Inter-terminal Switching Service.

The service performed in handling a car which has been loaded or reshipped within the switching limits on one road for unloading or reshipping within the same switching limits on another road.

Amended form, effective July 1, 1927:

Switching service is defined as follows:

(a) Terminal Switching Service.

The service performed by a terminal switching road, as defined in these rules.

(b) Intermediate Switching Service.

The service performed by an intermediate switching road, as defined in these rules.

(c) Inter-terminal Switching Service.

The service performed in handling a car which has been loaded or reshipped within the switching limits on one road for unloading or reshipping within the same switching limits on another road and at a switching charge.

RULES
(Subject to Such Changes as May Be Required to Meet Local Conditions.)

Rule 1

Original reading, adopted May 18, 1910:

Section I. The carrier road will allow the terminal switching road a reclaim of —— days at the current per diem rate for each loaded movement under a switching charge.

Section II. The carrier road will allow the intermediate switching road —— days' per diem reclaim to cover movement of a loaded car to the terminal switching road, and will allow the terminal switching road (in addition to reclaim provided for in Section I, Rule 1) to reclaim —— days to cover its return empty via the intermediate road to the carrier or home road.

Section III. The carrier road will allow the intermediate switching road —— days' per diem to cover the movement of an empty car to the terminal switching road, and will allow the terminal switching road (in addition to the reclaim provided in Section I, Rule 1) to reclaim —— days' per diem to cover the loaded return via the intermediate switching road to the carrier road, provided the car is so returned within—— days with a load originating within the switching limits destined to a point beyond the switching limits.

NOTE—Sections I, II and III of Rule 1 will also apply to cars which by reason of cancellation of order or error on the part of the carrier road are returned empty to carrier road.

Section IV. The carrier road will allow the terminal switching road (in addition to the reclaim provided for in Section I, Rule 1) to reclaim —— days' to cover the movement via an intermediate switching road to the carrier road of a car supplied by the terminal switching road (a pick-up car) containing a load originating within the switching limits and destined to a point beyond the switching limits.

Section V. The carrier road delivering a car to an intermediate switching road in through service (the lading originating and terminating beyond switching limits) will allow the intermediate switching road —— days' per diem reclaim on each car.

Section VI. The carrier road will allow in the case of a car being handled by two or more intermediate switching roads in moving between a carrier and a terminal switching road —— days' per diem reclaim, the allowance to be made to the immediate intermediate switching road, which will be divided equally between the two or more intermediate switching roads.

Amended form, adopted May 20, 1914:

Rule 1

The carrier roads will allow each terminal switching road the reclaim specified below, determined in accordance with Per Diem Rule 5, at the current per diem rate.

North & South R.R. —— days.
East & West R.R. —— days, etc.

ceedings against member lines for violations of said rules, either on its own initiative or on complaints filed with it.

Car records of any subscriber road shall be open to the inspection of any properly accredited inspector of the Commission on Car Service of the American Railway Association, or of any subscribing railroad which may desire to check same for violations of the Car Service Rules.

(III) It shall be the duty of the Commission to conduct such investigation as may in its judgment be necessary to determine the facts.

If the Commission shall find that any violation of Car Service Rule 1, 2, 3 or 4 has occurred it shall enforce the penalty provided in Per Diem Rule 3.

(IV) Any railroad may refer to the Commission any case or cases of violation of these rules.

(V) In the event the case presented is not proven, the expense of the investigation shall be paid by the complainant.

Amended form, effective March 1, 1920:

19. The Executive Committee‡ of the American Railway Association shall appoint a Commission on Car Service* composed of a Chairman and the requisite number of members, territorially representative, invested with plenary power to—

(a) Supervise the application of Car Service and Per Diem Rules.

(b) Suspend or permit departures from Car Service Rules 1 to 5, inclusive, except as provided in Rule 20.

(c) Exempt when necessary, cars of any type, from the provisions of Car Service Rules 1 to 5, inclusive, and provide other regulations under which such cars shall be handled.

(d) Transfer cars from one railroad or territory to another when necessary to meet traffic conditions, with due regard to car ownership and requirements. (See Note.)

‡Changed to read "Board of Directors" in reprint of Code, March 1, 1923.

*Changed to read "Car Service Division" in reprint of Code, March 1, 1923.

NOTE TO PARAGRAPH (*d*), RULE 19.—This provides an adjustment of surplusages and shortages, and is intended to suggest an equalization of service so far as practicable and consistent with car ownerships. By the latter is meant that if one railroad has, in its good judgment, provided amply for its coal-loading patrons, for example, while another has not, and the demand is generally equal to supply, the mines of the first will not necessarily be depleted in order that the mines on the improvident road may be the better served. Generally, as between the provident and improvident roads, it must be recognized that if in time of great car demand, the latter has to be assisted for the benefit of its patrons and its territory at the expense of the former, there must necessarily be set up some method of compensation for the former, and this of necessity, may go beyond mere car hire. In treatment of "Short Lines," or "Feeders," without any appreciable car ownership, such lines must be given a measure of car supply from "Trunk Lines" consistent with current distribution percentages on such trunk lines; in other words, they must be treated as industries on the trunk line connection.

(e) Conduct investigations, including examination of car records as may be necessary to insure the observance of Car Service, and Per Diem Rules, and of any orders issued by the Commission on Car Service,* and in the event that they are unable to adjust such matters with the individual railroads, report all the facts with a recommendation to the Executive Committee.‡

(f) Obtain car location statements and other car performance statistics as deemed necessary.

(g) Take necessary action to bring about uniformity of practice among railroads by the standardization of car distribution rules, including record and report forms.

(h) Make recommendation to the Executive Committee‡ when in their opinion a change in the per diem rate is necessary or desirable.

(i) To perform such other duties as may be assigned by the Executive Committee.‡

The headquarters of the Commission* provided for by this rule shall be Washington, D. C.

Old Rule 20

Adopted November 17, 1915; *effective January* 1, 1916:

20. A road re-weighing and re-marking a foreign car as prescribed in Car Service Rule 11 may reclaim for two days' per diem against the owning road.

Eliminated November 15, 1916, *as of October* 1, 1916.

Rule 20

Effective March 1, 1920:

20. Departure from Car Service Rules 1 to 5, inclusive, affecting Canadian Railway Cars on United States Railroads, or United States Railroad cars on Canadian Railways, shall be only by agreement as between the American Railway Association, and the Railway Association of Canada.

*Changed to read "Car Service Division" in reprint of Code, March 1, 1923.
‡Changed to read "Board of Directors" in reprint of Code, March 1, 1923.

Amended form, effective March 1, 1923:

Rule 1

The carrier road will allow the switching road a reclaim in accordance with Per Diem Rule 5 at the current per diem rate.

Old Rule 2. Reading, adopted May 18, 1910. Eliminated May 20, 1914:

The intermediate switching road will reclaim against the road from which it received the car in each instance.

Rule 2

Original reading, adopted May 20, 1914:

Section I. No reclaim shall be allowed for an intermediate switching movement.

Section II. No reclaim shall be allowed under this rule to a non-subscriber.

Amended form, adopted Nov. 17, 1915:

Rule 2

Section I. No reclaim shall be allowed for an intermediate switching movement.

Section II. No reclaim shall be allowed for an intra-terminal switching movement.

Section III. No reclaim shall be allowed under this rule to a non-subscriber.

Amended form, effective March 1, 1923:

Rule 2

Section 1. No reclaim shall be allowed for an intermediate switching movement.

Section 2. No reclaim shall be allowed for an inter-terminal switching movement.

Section 3. No reclaim shall be allowed to a non-subscriber.

Amended form, effective July 1, 1925:

Rule 2

Section 1. No reclaim shall be allowed for an inter-terminal switching movement.

Section 2. No reclaim shall be allowed to a non-subscriber.

Amended form, effective January 1, 1928:

Rule 2

Section 1. No reclaim shall be allowed for an inter-terminal switching movement except as provided in per diem rule 5, paragraph (c).

Section 2. No reclaim shall be allowed to a non-subscriber.

Old Rule 3. Reading, adopted May 18, 1910. Eliminated May 20, 1914:

The terminal switching road will make reclaim against the carrier road in each instance as provided for in Sections II, III and IV of Rule 1.

Rule 3

Adopted May 20, 1914:

Rule 3 was formerly note to Rule 1, Sections 1, 2 and 3.

Rule 1 will also apply to cars which by reason of cancellation of order or error on the part of the carrier road are returned empty to carrier road.

Amended form, effective March 1, 1923:

Rule 3

Rule 1 of this Code will apply to cars which are delivered empty to switching road for loading, and are returned empty to carrier road by reason of shippers' cancellation of order, or error on the part of carrier road, and to cars which are rejected by shippers account of being unsuitable for specified loading when received from the carrier road.

Amended form, effective July 1, 1927:

Rule 3

Rule 1 of this Code will not apply to cars which are delivered empty to switching road for loading, and are returned empty to carrier road by reason of shippers' cancellation of order, or error on the part of carrier road, and to cars which are rejected by shippers account of being unsuitable for specified loading when received from the carrier road. (See Per Diem Rule 14.)

Rule 4

Original reading, adopted May 18, 1910:

The right of reclaim is not affected by the fact that in switching service the switching roads may collect their charges from the shipper or consignee.

Amended form, effective March 1, 1923:

Rule 4

The right of reclaim is not affected by the fact that in switching service the switching road may collect its charges from the shipper or consignee.

Old Rule 5—May 18, 1910-July 1, 1927

Original reading, adopted May 18, 1910:

Section I. Whereas Car Service Rule 5 provides that delivery is not complete unless a car is accompanied or preceded by proper data for forwarding, it is understood and agreed upon that when a car is receipted for without the proper data for forwarding, the receiving line shall immediately notify the delivering line in writing. Upon doing this, the receiving line may reclaim against the delivering road for the actual time intervening between the receipt of the car and the receipt of proper data for forwarding. If the road tendering the car without proper data for forwarding, orders it returned, the receiving road may reclaim per diem accruing, and in addition thereto, not to exceed two days' per diem from the date of receipt of the order to return the car.

Section II. The proper data for forwarding will consist of regular waybill, conductor's card waybill, running slip or memo bills as receiving road may require, and in the case of export and import shipments, proper data in addition to the above, will consist of customs manifest and such other data as may be required by the customs regulations.

Amended form, adopted May 20, 1914:

Rule 5

Section I. Whereas Car Service Rule 5 provides that delivery is not complete unless a car is accompanied or preceded by proper data for forwarding, it is understood and agreed upon that when a car is receipted for without the proper data for forwarding, the receiving road shall notify the delivery road in writing immediately. Upon doing this, the receiving road may reclaim against the delivering road for the actual time intervening between the receipt of the car and the receipt of proper data for forwarding, except when notice is not given within the first twenty-four hours, reclaim may only be made from date of notice. If disposition is not furnished in three days, holding road may return car and reclaim per diem for time so held. If the road tendering the car without proper data for forwarding, orders it returned, the receiving road may reclaim per diem accruing to the date of receipt of such order, and in addition thereto the actual per diem accruing from date of receipt of order to date of return of car, but in no case shall this exceed two days.

Section II. The proper data for forwarding will consist of regular waybill, conductor's card waybill, running slip or memo bills as receiving road may require, and in the case of export and import shipments, proper data in addition to the above, will consist of customs manifest and such other data as may be required by the customs regulations.

Section III. Under this rule the receiving road is entitled to reclaim on its own cars.

Sections I and II of Rule 5 eliminated from the Code of Switching Reclaim Rules and Section III of Rule 5 was included as a part of new Rule 6, effective March 1, 1923.

Amended form, effective March 1, 1923:

Rule 5

The reclaim under Rule 1 of this Code shall be in addition to other reclaims accruing under the Per Diem Rules.

Eliminated and taken care of in Revision of Per Diem Rules 14 and 15, effective July 1, 1927.

Rule 5

Original reading (Rule 8), adopted May 18, 1910:

It is understood that in the application of these rules the owner road will not be entitled to reclaim on its own cars or on cars loaded with company material for its own use.

Amended form (Rules 6 and 8), adopted May 20, 1914:

6. These rules shall not apply to private cars or cars of non-subscribers.

8. It is understood that, except as provided in Rule 5, in the application of these rules the owner road will not be entitled to reclaim on its own cars or on cars loaded with company material for its own use.

Amended form (Rules 6 and 7), effective March 1, 1923:

6. These rules apply to cars of subscriber roads, including cars owned by the switching roads, except they shall not apply to cars loaded with company material (including company coal) for the use of the switching road.

7. These rules shall not apply to cars of private ownership or cars of non-subscribers.

Amended form, effective July 1, 1927:

Rule 5

These rules apply only to cars subject to per diem basis of settlement, including cars owned by the switching road, except they shall not apply to cars loaded with company material (including company coal) for the use of the switching road.

Old Rule 6—May 18, 1910-May 20, 1914

Old Rule 6. Original reading, adopted May 18, 1910:

Section I. *Whereas,* the Per Diem Rules Arbitration Committee of the American Railway Association, under date of August 27, 1903, delivered the following opinion:

"Two or more roads in local territory may agree to disregard Rule 14 as applicable to cars in switching service, but such agreement shall not be binding upon a dissenting minority."

Section II. It is understood and agreed that Rule 14 of the Code of Per Diem Rules is not applicable to cars in switching service, except if a switching road will not accept delivery of switch cars currently, it must give notice thereof to its connections on prescribed form (embargo telegram)

and receive all cars delivered on interchange track at time notice is given.

Amended form, adopted May 17, 1911:

When cars are held by a road for delivery within a switching district and cannot be received by the switching line owing to the disability of the consignee, notice must be promptly given by the switching line to the road holding the car, in order that it may give notice to consignee.

The agent of the holding road will give prompt notice as per National Car Demurrage Rule 2 (b) 1 and explanation thereto.

When demurrage is charged, the road holding the car cannot reclaim under Per Diem Rules 14 or 15.

Eliminated in revision, May 20, 1914.

Rule 6

Original reading (Rule 8), effective March 1, 1923:

Section 1. The data necessary to establish the terminal reclaim allowance, when the average number of days is used as the basis, shall be obtained from the records of the switching road as follows:

(a) A check covering a representative number of seasonal months shall be made under the direction of the American Railway Association, or otherwise as may be agreed upon between the roads interested.

(b) The check shall include all cars subject to terminal switching reclaim under Per Diem Rule 5, except cars used in local service, pick-up cars, diverted cars and cars loaded with live stock, but not excepting cars loaded with emigrant movables or exhibition live stock, handled during the months checked.

Section 2. In figuring the detention to each car subject to reclaim, including cars owned by the switching road, the days shall be computed as follows:

(a) On cars received loaded and returned empty, cars received empty and returned loaded, cars received and returned loaded and cars received empty and returned empty per Rule 3 of this Code, count from date received to date returned as evidenced by Interchange Reports.

(b) On cars received loaded from other than the owner, which after being unloaded are delivered empty to owner within the same switching district, count from date of receipt to date of delivery as evidenced by Interchange Reports.

(c) On cars received loaded which are reconsigned or reshipped, count from date of receipt as evidenced by the Interchange Reports, to date reconsigned or reshipped, for the inbound movement; count from date reconsigned or reshipped to date delivered to carrier road on outbound movement as evidenced by the Interchange Reports.

(d) In computing detention in accordance with this rule, the detention of any car beyond eight (8) days shall be eliminated, except if a car is received from and returned to the same road loaded in both directions the detention beyond sixteen (16) days shall be eliminated.

(e) Cars on which the required records are incomplete shall be excluded.

Section 3. The terminal switching reclaim allowance shall be determined by dividing the total detention, computed in accordance with this rule, by the total number of cars included in the check, cars which are received

from and returned to the same road loaded in both directions to be counted as two (2) cars. The quotient to be carried to two (2) decimals, and remainder beyond the hundredth of a day to be dropped.

Amended form, effective July 1, 1927:

Rule 6

Section 1. When the average number of days is used as the basis for settlement of terminall switching reclaims, the arbitrary to be allowed shall be based on the average time required by the switching road to switch cars for all the roads considered as a whole in the switching district involved. Such arbitrary shall be obtained from the records of the switching road as follows:

(a) A check covering a representative number of seasonal months shall be made under the direction of the American Railway Association, or otherwise as may be agreed upon between the roads interested.

(b) The check shall cover all cars included in terminal switching reclaim statements for the months to be checked, except—

(1) Cars loaded with live stock, but not excepting cars loaded with emigrant movables or exhibition live stock.
(2) Trap or ferry cars.
(3) Cars used in local and inter or intra plant service.
(4) Cars on which the required records are incomplete.

Section 2. In figuring detention, the days shall be computed as follows:

(a) Cars received loaded and returned empty to the road from which received or delivered empty to another road within the same switching district, and cars received empty and returned loaded to the road from which received or delivered loaded to another road within the same switching district, count from date received to date of delivery.

(b) Cars received loaded and returned loaded to the road from which received or delivered loaded to another road within the same switching district, count from date received to date of delivery.

(c) Cars picked up from road haul service and placed in terminal switching service, count from date placed for loading, as evidenced by the demurrage records (using 7 a. m. demurrage placement date) to date delivered to outbound carrier as evidenced by interchange reports.

(d) Cars diverted from terminal switching service to road haul service, count from date of receipt as evidenced by the interchange reports to the date released from inbound load as evidenced by the demurrage records.

(e) On cars handled in terminal switching service and subsequently reconsigned or reshipped in road haul service, count from date of receipt as evidenced by interchange reports to date released as evidenced by demurrage records.

(f) On cars received in road haul service and subsequently reconsigned or reshipped in terminal switching service, count from date of release as evidenced by demurrage records, to date delivered to outbound carrier, as evidenced by interchange reports.

(g) Cars owned by the switching road which are loaded in terminal switching service shall be considered pick-up cars and detention computed per paragraph (c).

(h) Cars owned by the switching road which are unloaded in terminal switching service shall be considered

diverted cars and detention computed per paragraph (d).

(i) Where an intermediate switching road is involved in the terminal switching movement, the receipt from or delivery to the intermediate road shall be considered as receipt from or delivery to the carrier road.

Section 3. In computing detention in accordance with this rule, the detention of any car beyond eight (8) days shall be eliminated except if a car received loaded is made empty, reloaded and returned to the road from which received or delivered to another road, the detention beyond sixteen (16) days shall be elimjnated.

Section 4. The terminal switching reclaim allowance shall be determined by dividing the total detention, computed in accordance with this rule, by the total number of cars included in the check, cars received loaded, which are made empty, reloaded and returned to the road from which received, or delivered to another road, to be counted as two (2) cars. The quotient to be expressed in two decimals, the second decimal to be increased by one (1) when the third (3rd) decimal is five (5) or more.

Rule 7

Original reading (*Rule 7*), *adopted May* 18, 1910:

An Arbitration Committee of ——— members shall be appointed by roads in each local territory, ——— of whom shall constitute a quorum. All questions arising under these rules shall be submitted to this Committee through its Secretary, who shall briefly set forth the points at issue and each party's interpretation of the rule on which the claim is based. The Arbitration Committee shall base its decision upon the local rules and the abstract submitted, and its decision shall govern. Should one of the parties to the dispute refuse to furnish information, the Arbitration Committee shall use its judgment as to whether or not it can properly decide the question at issue.

Amended form (*Rule 9*), *effective March 1, 1923, and changed to Rule 7, effective July 1, 1927*:

An Arbitration Committee may be appointed by interested roads in any local territory. All questions arising under these rules shall be submitted to such committee through its secretary, who shall briefly set forth the points at issue and each party's interpretation of the rule on which the claim is based. Should one of the parties to the dispute refuse to furnish information, such Arbitration Committee shall use its judgment as to whether or not it can properly decide the question at issue, and shall base its decision upon these rules or as modified under agreement between the roads interested and the abstract submitted, and its decision shall govern, except that either party to the dispute may appeal to the Per Diem Rules Arbitration Committee of the American Railway Association.

Old Rule 9—May 18, 1910-March 1, 1923.

Original reading, adopted May 18, 1910:

Rule 9

These rules shall continue from date of adoption until amended or withdrawn by three months' previous notice in writing to the parties interested.

Eliminated, effective March 1, 1923.

CHANGES IN THE CODE OF PER DIEM RULES DURING THE PERIOD OF FEDERAL CONTROL

Orders Issued by Director General of Railroads

General Order No. 31: Effective July 1, 1918, the following rules and regulations shall govern the accounting for the use of equipment or facilities of one carrier under Federal control by or for the account of another carrier under such control, provided, nothing herein contained shall be construed to warrant the discontinuance of the keeping, rendition and settlement of such accounts by a carrier under Federal control in favor of or against a carrier not under Federal control, in the same manner as heretofore.

1. Hire of Freight and Passenger Train Equipment.

1. The practice of recording, computing and paying per diem, mileage, or rental for the use of freight and passenger train cars of one carrier under Federal control by or for account of another carrier under Federal control, and the adjustment of differences, reclaims, etc., between such carriers which clearly relate to transactions incurred on or after January 1, 1918, shall be discontinued.
2. Junction cards, interchange reports, location records, and all other records and reports necessary to determine the location of equipment, shall be kept, rendered and compiled as heretofore. (See Notes 1 and 2.)

General Order No. 31-A: Effective October 1, 1919, the following rules and regulations shall govern the accounting for the use of equipment of one carrier in Federal operation by or for the account of another carrier in Federal operation (cancelling instructions in conflict therewith in General Order No. 31):

Hire of Freight and Passenger Train Equipment

The practice of recording, computing and paying per diem, mileage, or rental for the use of freight and passenger train cars of one carrier in Federal operation by or for account of another carrier in Federal operation, and the adjustment of differences, reclaims, etc., between such carriers shall be reinstated, in accordance with such detailed instructions as may be issued by the Division of Operation, Car Service Section.*

Note No. 1.—P. S. & A. Circular No. 13, issued July 3, 1918, by the Director, Division of Public Service and Accounting:

"In the matter of the reporting, charging and collection of per diem, as provided for in General Order No. 31:

"The question has been asked as to whether Per Diem Reports, charges, credits and collections, which accrued prior to July 1, 1918, should be discontinued.

"The Order contemplates that Per Diem Reports, charges, credits, collections, reclaims, and all claims in reference to per diem other than those due to arithmetical errors, up to and including June 30, 1918, shall be continued as heretofore and that the provisions of the Order relate only to accruals on and after July 1, 1918."

Note No. 2.—P. S. & A. Circular No. 37, issued October 23, 1918, by the Director, Division of Public Service and Accounting:

*See Pages 69 to 76 for instructions issued by Car Service Section.

"General Order No. 31 provides for the discontinuance of the practice of recording, computing and paying per diem, mileage, on rental on freight and passenger train cars of one carrier under Federal control, by, or for account of another carrier under Federal control, etc.

"It was intended by the provisions of this order to discontinue the recording, vouchering and payment, and the recording, billing and collection of per diem, mileage, or rental when the amounts payable or collectible were due to or from lines under Federal control, and when, in addition, the amount represented thereby were properly chargeable or creditable to the accounts, 'Hire of freight cars,' or 'Rent from (for) passenger cars.'

"The provisions of this order do not require;

"(*a*) The discontinuance of the payment of amounts for use of cars due to independent car lines when the property of such lines was not taken under Federal control.

"(*b*) The discontinuance of the payment or collection of per diem, mileage or rental from lines not under Federal control.

"(*c*) The discontinuance of the payment or collection of rents for use of locomotives.

"The order referred to deals only with the rental of freight and passenger train cars. Rental for locomotives and work cars should be assessed and collected as heretofore."

Instructions promulgated to Federal roads by Circular C.S.-59, Car Service Section, Division. Operation, and to non-Federal roads by Circular S.V.-10, April 10, 1919.

The following regulations governing the settlement of passenger and freight car hire accounts approved March 25, 1919, effective May 1, 1919.

1. Settlement of passenger and freight car hire accounts between Canadian and United States roads will be made in accordance with rules annexed hereto as Appendix "A."

2. Settlement of passenger and freight car hire accounts between Federal and non-Federal roads within the United States will be made in accordance with rules annexed hereto as Appendix "B."

3. Assignments of non-Federal roads to Federal roads for purpose of settlement in accordance with rules contained in Appendix "B" will be as currently shown in Official Railway Equipment Register.

4. Mexican roads will be treated the same as non-Federal roads, but no change will be made in present method of settlement.

Exceptions

5. The above regulations will not apply to the following classes of roads:

1. (a) Roads found to be plant facilities.
   (b) Roads receiving allowances on a plant-facility basis under Section 15 of the Act to Regulate Commerce.
   (c) Roads which do not participate in joint through rates either directly or through absorption of regularly published and filed switching charges, and which do not receive any allowances.
2. (a) Roads found to be industrial common carriers.

6. Cars interchanged with roads covered by Exception No. 1 will be subject to the current demurrage tariffs from time of delivery upon interchange track until returned thereto; demurrage to be assessed against consignors or consignees.

7. Cars interchanged with roads described in Exception No. 2 will be subject to rules and regulations outlined in Appendix "C" annexed hereto.

8. The "Car Hire Bureau" referred to in Appendix "A" will be located at Buffalo, N. Y., under the supervision of J. W. Smith, as Manager.

9. The rendering of Per Diem Reports between roads in United States and roads in Canada will be discontinued subsequent to reports for the month of April, 1919.

10. Per Diem due to or from Canadian roads account of discrepancies and reclaims for period prior to May 1, 1919, will be settled through the Bureau. Data to enable settlement of these amounts will be furnished to the Bureau in such detail as may be required by the Bureau.

APPENDIX "A"

Rules Governing Settlement of Freight and Passenger Car Hire Accounts Between Canadian and United States Roads

A bureau to be known as the "Car Hire Bureau" will be established by the United States Railroad Administration for the purpose of maintaining a record of the interchange of all railroad-owned cars between Canadian and United States roads and for the settlement of freight and passenger car hire.

Freight Cars

1. The Code of Per Diem Rules shall govern except as hereinafter modified.

2. The Bureau shall receive a copy of the interchange report made at all points where cars are interchanged between Canadian and United States roads.

3. (a) Each Canadian road shall report monthly to the Bureau all per diem earned by railroad cars (other than Canadian roads' cars) on its line, showing the name of road delivered to and date of such delivery.

(b) The Bureau shall report monthly to each Canadian road all per diem earned by its cars while on roads in the United States and Mexico.

4. Reclaims due from United States and Mexican roads to Canadian roads under Per Diem Rules 5 and 14, and on account of special conditions, shall be reported by the Federal roads to the Bureau in such detail as may be required by the Bureau.

These reclaims shall be included in the Bureau's report to the proper Canadian road.

5. Reclaims due from Canadian roads to United States and Mexican roads under Per Diem Rules 5 and 14, and on account of special conditions, shall be included in Per Diem Reports of Canadian roads to the Bureau in such detail as may be required by the Bureau. Each Federal road shall report to the Bureau reclaims due from Canadian roads in such detail as may be required by the Bureau.

6. Each Federal road shall notify the Bureau and the car owners respecting cessation or suspension of per diem under Per Diem Rules 7 and 8 on cars of Canadian roads on its road or non-Federal roads assigned to it and obtain acknowledgment of receipt thereof from the Bureau.

7. Each Canadian road shall notify the Bureau and the car owners of the cessation or suspension of per diem as provided by Per Diem Rules 7 and 8 on cars of United States and Mexican roads while on its line.

Passenger Cars

8. The rates named in Car Service Rules for use of passenger equipment shall govern.

9. Each Canadian road shall report monthly to the Bureau all mileage and per diem earned by railroad-owned passenger equipment (other than Canadian roads' cars) on its line, showing the name of road delivered to and date of such delivery.

10. The Bureau shall report monthly to each Canadian road all mileage and per diem earned by its passenger equipment while on roads in the United States and Mexico.

11. Each Federal road handling passenger equipment of Canadian roads shall submit monthly statement to the Bureau showing earnings of such cars, whether mileage or per diem, on its rails and the rails of non-Federal roads assigned to it.

12. Each Federal and non-Federal road shall make monthly reports to the car owners, showing by car number the wheelage of passenger equipment of Canadian roads on its line.

Each Canadian road shall make monthly wheelage reports to car owners, showing by car number the wheelage of all Federal and non-Federal passenger equipment on its line.

APPENDIX "B"

Rules Governing Settlement for Freight and Passenger Car Hire Accounts Between Federal and Non-Federal Roads

Each non-Federal road shall be assigned to a Federal road with which it shall make settlement of freight and passenger car hire as provided in these rules.

NOTE.—Each non-Federal road having registration in the Official Railway Equipment Register shall insert therein the name of the Federal roads to which it is assigned.

Freight Cars

1. The Code of Per Diem Rules shall govern except as hereinafter modified.

2. Each non-Federal road (except those included in paragraph 5 of Circular CS-59) shall report to the Federal road to which it is assigned all per diem earned by railroad-owned cars on its line (with a record of receipt and delivery of such cars) and to which it shall pay all per diem due.

3. Each Federal road shall be responsible for the payment of per diem on cars owned by the non-Federal road or roads assigned to it while such cars are away from home. The non-Federal road shall submit monthly statement to the Federal road to which it is assigned, showing all per diem earned on its cars while they are away from home, with record of interchange with the home road.

4. A Federal road handling cars (other than cars of its own ownership) in terminal switching service for a non-Federal road may reclaim an amount equal to the actual time, with a maximum of five days on any one car, which shall be paid by the non-Federal road to the Federal road to which it is assigned.

5. A non-Federal road handling cars (other than cars of its own ownership) in terminal switching service for a Federal road may reclaim an amount equal to the actual time, with a maximum of five days on any one car, which shall be paid by the Federal road to which the non-Federal road is assigned.

6. When a non-Federal road under its contract with the United States Railroad Administration is allowed a special per diem reclaim on cars delivered to it, such reclaims shall be paid by the Federal road to which it is assigned, but shall not be in addition to any switching reclaim herein established.

7. When it has been established that a reclaim is due to or from a non-Federal road from or to a Federal road under Per Diem Rule 14, or on account of special conditions, settlement shall be made by the non-Federal road with the Federal road to which it is assigned.

8. When cars are handled under Per Diem Rule 5 or held under Per Diem Rule 14 by one non-Federal road for another non-Federal road, reclaim settlement shall be made direct between such roads.

9.* When per diem earnings of cars of non-Federal ownership cease or are suspended as provided by Per Diem Rules 7 and 8, notices in accordance with these rules shall be transmitted both to the Federal road responsible for settlement with owner and to the owner of the car.

10.* When per diem earnings of any car on a non-Federal road cease or are suspended as provided by Per Diem Rules 7 and 8,

*Note to Rules 9 and 10.—The names of officers to whom these reports are to be forwarded should be inserted in each road's registration in the Official Railway Equipment Register.

notices in accordance with these rules shall be transmitted both to the owner and to its assigned Federal road.

Passenger Cars

11. The rates named in Car Service Rules for use of passenger equipment shall govern.

12. Each non-Federal road shall report and pay to the Federal road to which it is assigned earnings of each railroad-owned passenger car on its line, whether mileage or per diem.

13. Each Federal road shall be responsible for the payment of mileage and per diem on passenger equipment owned by the non-Federal road or roads assigned to it while they are away from home. The non-Federal road shall submit monthly a properly supported statement to the Federal road to which it is assigned, showing all mileage and per diem earnings on its passenger equipment while away from home.

14. Each Federal road shall make monthly wheelage reports to car owner of non-Federal roads' passenger equipment on its line. Each non-Federal road shall make monthly wheelage reports to car owner for all foreign passenger equipment on its line.

APPENDIX "C"

Code of Rules Governing Charges for Detention and Use of Freight Cars While in Possession of Industrial Common Carriers

NOTE.—These rules to apply only where a railroad has been found an industrial common carrier.

Rule 1.—Cars Subject to Rules

All cars held by an industrial common carrier are subject to these rules, except as follows:

Cars at home on the tracks of the industrial common carrier or industries located thereon.

Rule 2.—Free Time Allowed

Section A.—Seventy-two (72) hours (3 days) free time will be allowed:

1. On cars delivered loaded and returned empty.
2. On cars delivered empty and returned loaded.

Section B.—One hundred and forty-four (144) hours (6 days) free time will be allowed on cars delivered loaded and returned loaded.

Section C.—Twenty-four (24) hours (1 day) free time will be allowed on cars delivered empty and returned empty.

Rule 3.—Computing Time

Time will be computed from the first 7 a. m. after actual placement on the interchange track until returned to the same or another recognized interchange track; except that when, through no fault of

the delivering line, actual placement of a car cannot be made upon the interchange track, time will be computed from the first 7 a. m. after notice of readiness to deliver such car has been sent or given to the industrial common carrier, such notice to contain point of shipment, car initials and numbers, contents, consignee, and if transferred in transit, the initials and number of the original car.

In computing time, Sundays and legal holidays (National, State or Municipal), but not half-holidays, will be excluded, except as otherwise provided in Section A, paragraph 3, of Rule 4.

Rule 4.—Charges

Section A.—1. On cars subject to Rule 2, Section A, one credit will be allowed for each car returned within the first forty-eight (48) hours of free time; after the expiration of seventy-two (72) hours free time, one debit per car per day, or fraction of a day, will be charged for each of the first four days; in no case shall more than one credit be allowed on any one car and in no case shall more than four credits be applied in cancellation of debits accruing on any one car.

2. On cars subject to Rule 2, Section B, two credits will be allowed for each car returned within the first ninety-six (96) hours of free time; one credit will be allowed for each car returned within the first one hundred and twenty (120) hours free time; after the expiration of one hundred and forty-four (144) hours free time, one debit per car per day or fraction of a day will be charged for each of the first eight days; in no case shall more than two credits be allowed on any one car, and in no case shall more than eight credits be applied in cancellation of debits accruing on any one car.

3. After a car has accrued the debits named in paragraphs 1 and 2 of this rule, a charge of *$.... per car per day will be made for each succeeding day or fraction of a day. After a car has accrued the debits provided in paragraphs 1 or 2, the charges named herein will apply on all subsequent Sundays and legal holidays.

4. At the end of the calendar month the total number of credits will be deducted from the total number of debits, and *$.... per debit will be charged for the remainder. If the credits equal or exceed the debits, no charge will be made and no payment will be made by the carrier line on account of such excess of credits; nor shall the credits in excess of the debits of any one month be considered in computing the average detention for another month.

Section B.—On cars subject to Rule 2, Section C, the following charges per car per day or fraction of a day, will be made, after expiration of twenty-four hours free time; *$.... for each of the first four (4) days; and for each succeeding day, *$....

*Current demurrage rate.

Circular C.S.-77, issued by Car Service Section to roads under Federal control, and Circular S.V.-15, to roads not under Federal control, November 13, 1919, superseding Circulars C.S.-59 and S.V.-10.

In accordance with Director General's Order 31-A, October 3, 1919, effective October 1, 1919, the settlement of passenger and freight car hire accounts will be in accordance with following regulations:

Per diem settlements for use of freight cars will be in accordance with the Code of Per Diem Rules in effect J 1, 1918, with the following exceptions:

Rule 3.—Suspended.

Rule 15.—All regulations embraced in Circular CS-57 covering the issuance of embargoes are continued in effect and will supersede paragraph 3 of the rule.

Rule 19.—Suspended.

Per diem and mileage settlements for use of passenger cars will be in accordance with Rules 7 and 8 of the Code of Car Service Rules in effect July 1, 1918.

1. The settlement of car hire accounts between Canadian roads and United States roads through the Car Hire Bureau at Buffalo will be discontinued with Per Diem Reports for the month of September, 1919.

Per diem accruing from October 1, 1919, should be reported direct to the car owner.

Per diem due to or from Canadian roads account of discrepancies and reclaims for period May 1, 1919, to September 30, 1919, will be handled through the Car Hire Bureau at Buffalo.

Per diem due to or from Canadian roads account of discrepancies and reclaims covering period prior to May 1, 1919 (not in process of settlement through the Car Hire Bureau), will be handled direct by the interested lines.

2. The settlement of car hire accounts between Federal and non-Federal roads within the United States through the assigned Federal road will be discontinued with the Per Diem Reports for the month of September, 1919.

Per diem accruing from October 1, 1919, should be reported direct to car owner.

Per diem due to or from non-Federal roads account of discrepancies and reclaims covering period prior to May 1, 1919, will be handled direct between the interested lines.

Per diem due to or from non-Federal roads on account of discrepancies and reclaims for period May 1, 1919, to September 30, 1919, will be handled through the assigned Federal road.

Allowances of two days free of per diem to short line railroads not under Federal control, which have executed a Short Line Contract or Waiver of Claims will be in accordance with directions of the Car Service Section.

3. Cars placed in service by the United States Railroad Administration under the reporting marks "G E T" will be subject to per diem which should be reported to Mr. J. W. Smith, Manager, Car Hire Bureau, Buffalo, New York.

Exceptions

4. These regulations will not apply to the following classes of roads:

1. (a) Roads found to be plant facilities.
   (b) Roads receiving allowances on a plant facility basis under Section 15 of the Act to Regulate Commerce.
   (c) Roads which do not participate in joint through rates either directly or through absorption of regularly published and filed switching charges, and which do not receive any allowances.
2. Roads found by the Interstate Commerce Commission to be industrial common carriers.

5. Cars interchanged with roads covered by Exception No. 1 will be subject to the current demurrage tariffs from time of delivery upon interchange track until returned thereto; demurrage to be assessed against consignors or consignees.

6. Cars interchanged with roads described in Exception No. 2 will be subject to rules and regulations outlined in Appendix "C" of Circular CS-59.

[fol. 1069]- Ex. 506 Before I. C. C. in Docket No. 17801

Circular No. 2648

American Railway Association

R. H. Aishton, President. W. G. Besler, First Vice-President. Hale Holden Second Vice-President. Alfred P. Thom, General Counsel. H. J. Forster, Secretary and Treasurer.

Office of the Secretary, 30 Vesey Street, New York, April 27, 1927.

To the Members:

At the Annual Session of the Transportation Division, April 7, 1927, the following resolution was adopted:

"Resolved, That the change in Per Diem Rule 5 as recommended by the Committee on Records be approved for submission to the members of the Association for a vote by letter ballot."

A statement is attached showing the present rule with the change recommended. The purpose of this change is to prevent the payment of a double reclaim under Per Diem Rule 5 and Per Diem Rule 15 for the same car on the same day.

This change is submitted herewith for a vote by letter ballot in the usual manner; the proposed rule to take effect as of July 1, 1927, if approved by a majority of the membership, that majority to represent two-thirds of the freight cars owned or controlled by the members of the Association.

A form of ballot is enclosed herewith. This ballot must be used if the vote is to be recorded, and should be in the hands of the Secretary, 30 Vesey Street, New York, on or before noon, Eastern Standard Time, May 26, 1927.

Respectfully, H. J. Forster, Secretary.

Present Form	Proposed Form
(a) An amount for each car in switching service may be reclaimed by each individual switching road from the road for which the service was performed. This amount shall be based upon the average number of days, not to exceed five (5), for cars handled in Terminal Switching Service, except as otherwise provided in paragraph (b), actually required in such switching service to be determined annually, or at such other periods as may be agreed upon by the roads interested, by an examination of the records of each individual switching road, by the roads interested, for each local territory, except that roads in any local territory may agree to the settlement of terminal switching reclaims on the basis of actual time involved in handling the cars during the month for which the reclaim is made, subject to an agreed maximum number of days on any one car, the reclaim on pick-up and diverted cars shall be determined by a plan to be agreed upon by the interested roads, and the total reclaim for any month shall not exceed an average of five (5) days per car.	No change.
(b) An amount equal to the actual per diem accruing on each car loaded with live stock handled in switching service (but not including cars loaded with emigrant movables or exhibition live stock, which are subject to Section (a) of this rule) may be reclaimed by each individual switching road from the road for which the service was performed, provided that such reclaim shall not exceed one (1) day on any one car.	No change.
(c) Except as provided in paragraph (d), an intermediate switching road may reclaim one (1) day's per diem	(c) Except as provided in paragraph (d), an intermediate switching road may reclaim one (1) day's per diem

Proposed Form	Proposed Form
only from the delivering road on any car on which per diem accrues while in intermediate switching service.	only from the delivering road on any car on which per diem accrues while in intermediate switching service; *however, a car handled in intermediate switching service which is delayed on the intermediate switching road over midnight of the date received on account of being held under Rule 15 is not subject to intermediate reclaim.**
A terminal switching road delivering a car to an intermediate switching road for delivery to a carrier road shall pay the reclaim to the intermediate switching road and may reclaim such amount from the carrier road for which the service was performed.	No change.
(d) No reclaim shall be allowed for an inter-terminal switching movement.	No change.
(e) No reclaim shall be allowed to a non-subscriber.	No change.
(f) Unless otherwise unanimously agreed to by the interested roads, the Code of Switching Reclaim Rules of the American Railway Association shall govern in determining switching reclaim allowances.	No change.

[* Matter in italics underscored in copy.]

[fol. 1069-3] American Railway Association

Letter Ballot

Reply to Circular No. 2648 to be returned to H. J. Forster, Secretary, 30 Vesey Street, New York City, on or before noon, Eastern Standard Time, May 26, 1927.

_____

_____ R_____

On the proposition that Per Diem Rule 5 be amended, as recommended by the Committee on Records of the Transportation Division, and approved at the annual session of that Division on April 7, 1927, as indicated in Circular No. 2648, to take effect July 1, 1927, the vote of this Company is

Affirmative

Negative

(If you are in favor please cross off word "Negative" and vice versa.)

Name of Officer: _____

Title: _____

Date: _____

[fol. 1069–4]

Circular No. 2660

American Railway Association

R. H. AISHTON, President. W. G. BESLER, First Vice-President. HALE HOLDEN, Second Vice-President. ALFRED P. THOM, General Counsel. H. J. FORSTER, Secretary and Treasurer.

Office of the Secretary, 30 Vesey Street, New York, June 6, 1927.

To the Members:

Referring to Circular No. 2648, dated April 27, 1927, accompanying letter ballot covering the revision of Per Diem Rule 5, as recommended by the Transportation Division, to take effect July 1, 1927, if approved by a majority of the membership, that majority to represent two-thirds of the freight cars owned or controlled by the members of the Association.

The total membership of the Association is 407 and the cars owned or controlled by members is 2,567,085. The majority requisite for approval is 205 memberships owning or controlling 1,711,344 cars.

The vote on the revision of the rule is as follows:

Yes	358	Memberships,	representing	2,517,744 cars
No	2	"	"	1,180 "
Not voting	47	"	"	48,233 "

The proposition to amend Per Diem Rule 5, as indicated in Circular No. 2648, is approved.

Please take notice, therefore, that the amended rule becomes effective July 1, 1927.

The rule, as amended, is printed herewith.

By direction of the President.

Respectfully, H. J. Forster, Secretary.

Previous Form	Amended Form
(a) An amount for each car in switching service may be reclaimed by each individual switching road from the road for which the service was performed. This amount shall be based upon the average number of days, not to exceed five (5), for cars handled in Terminal Switching Service, except as otherwise provided in paragraph (b), actually required in such switching service to be determined annually, or at such other periods as may be agreed upon by the roads interested, by an examination of the records of each individual switching road, by the roads interested, for each local territory, except that roads in any local territory may agree to the settlement of terminal switching reclaims on the basis of actual time involved in handling the cars during the month for which the reclaim is made, subject to an agreed maximum number of days on any one car, the reclaim on pick-up and diverted cars shall be determined by a plan to be agreed upon by the interested roads, and the total reclaim for any month shall not exceed an average of five (5) days per car.	No change.
(b) An amount equal to the actual per diem accruing on each car loaded with live stock handled in switching service (but not including cars loaded with emigrant movables or exhibition live stock, which are subject to Section (a) of this rule) may be reclaimed by each individual switching road from the road for which the service was performed, provided that such reclaim shall not exceed one (1) day on any one car.	No change.
(c) Except as provided in paragraph (d), an intermediate switching road may reclaim one (1) day's per diem	(c) Except as provided in [illegible]ph (d), an intermediate switc[illegible]d may reclaim one (1) day's [illegible]n

Previous Form	Amended Form
only from the delivering road on any car on which per diem accrues while in intermediate switching service.	only from the delivering road on any car on which per diem accrues while in intermediate switching service; *however, a car handled in intermediate switching service which is delayed on the intermediate switching road over midnight of the date received on account of being held under Rule 15 is not subject to intermediate reclaim.*
A terminal switching road delivering a car to an intermediate switching road for delivery to a carrier road shall pay the reclaim to the intermediate switching road and may reclaim such amount from the carrier road for which the service was performed.	No change.
(d) No reclaim shall be allowed for an inter-terminal switching movement.	No change.
(e) No reclaim shall be allowed to a non-subscriber.	No change.
(f) Unless otherwise unanimously agreed to by the interested roads, the Code of Switching Reclaim Rules of the American Railway Association shall govern in determining switching reclaim allowances.	No change.

[fol. 1069–7]

Circular No. 2649

American Railway Association

R. H. Aishton, President. W. G. Besler, First Vice-President. Hale Holden, Second Vice-President. Alfred P. Thom, General Counsel. H. J. Forster, Secretary and Treasurer.

Office of the Secretary, 30 Vesey Street, New York, April 27, 1927.

To the Members:

At the Annual Session of the Transportation Division, April 7, 1927, the following resolution was adopted:

> "Resolved, That the changes in Per Diem Rule 5 and Rule 2 of the Code of Switching Reclaim Rules as recommended by the Committee on Records be approved for submission to the members of the Association for a vote by letter ballot."

A statement is attached showing the present rules with the changes recommended.

The proposed changes are submitted herewith for a vote by letter ballot in the usual manner; the amended rules to take effect as of January 1, 1928, if approved by a majority of the membership, that majority to represent two-thirds of the freight cars owned or controlled by the members of the Association.

A form of ballot is enclosed herewith. This ballot must be used if the vote is to be recorded, and should be in the hands of the Secretary, 30 Vesey Street, New York, on or before noon, Eastern Standard Time, May 26, 1927.

Respectfully, H. J. Forster, Secretary.

Present Form	Proposed Form
Rule 5.	
(a) An amount for each car in switching service may be reclaimed by each individual switching road from the road for which the service was performed. This amount shall be based upon the average number of days, not to exceed five (5), for cars handled in Terminal Switching Service except as otherwise provided in paragraph (b), actually required in such switching service to be determined annually, or at such other periods as may be agreed upon by the roads interested, by an examination of the records of each individual switching road, by the roads interested, for each local territory, except that roads in any local territory may agree to the settlement of terminal switching reclaims on the basis of actual time involved in handling the cars during the month for which the reclaim is made, subject to an agreed maximum number of days on any one car, the reclaim on pick-up and diverted cars shall be determined by a plan to be agreed upon by the interested roads, and the total reclaim for any month shall not exceed an average of five (5) days per car.	No change.
(b) An amount equal to the actual per diem accruing on each car loaded with live stock handled in switching service (but not including cars loaded with emigrant movables or exhibition live stock, which are subject to Section (a) of this rule) may be reclaimed by each individual switching road from the road for which the service was performed, provided that such reclaim shall not exceed one (1) day on any one car.	No change.
None.	*An amount equal to the actual per diem accruing on each car containing less-than-car-load freight (including cotton), commonly known as ~~a trap~~ or ferry car, handled in switching service,*

Present Form	Proposed Form
	originating at or destined to points outside the switching district, may be reclaimed by each individual switching road from the road for which the service was performed, provided the movement is duly authorized by tariff publication and subject to a switching charge, and further provided that such reclaim shall not exceed three days on any one car.
(c) Except as provided in paragraph (d), an intermediate switching road may reclaim one (1) day's per diem only from the delivering road on any car on which per diem accrues while in intermediate switching service. A terminal switching road delivering a car to an intermediate switching road for delivery to a carrier road shall pay the reclaim to the intermediate switching road and may reclaim such amount from the carrier road for which the service was performed.	No change.
(d) No reclaim shall be allowed for an inter-terminal switching movement.	(d) No reclaim shall be allowed for an inter-terminal switching movement *except as provided in paragraph (b) of this rule.*
(e) No reclaim shall be allowed to a non-subscriber.	No change.
(f) Unless otherwise unanimously agreed to by the interested roads, the Code of Switching Reclaim Rules of the American Railway Association shall govern in determining switching reclaim allowances.	No change.

Switching Reclaim Rule 2

Present Form	Proposed Form
Section 1. No reclaim shall be allowed for an inter-terminal switching movement.	Section 1. No reclaim shall be allowed for an inter-terminal switching movement *except as provided in per diem rule 5, paragraph (b).*
Section 2. No reclaim shall be allowed to a non-subscriber.	No change.

[fol. 1069–10] American Railway Association

Letter Ballot

Reply to Circular No. 2649 to be returned to H. J. Forster, Secretary, 30 Vesey Street, New York City, on or before noon, Eastern Standard Time, May 26, 1927.

_____

_____ R_____

On the proposition that Per Diem Rule 5 and Rule 2 of the Code of Switching Reclaim Rules, be amended, as recommended by the Committee on Records of the Transportation Division, and approved at the annual session of that Division on April 7, 1927, as indicated in Circular No. 2649, to take effect January 1, 1928, the vote of this Company is

Affirmative

Negative

(If you are in favor please cross off word "Negative" and vice versa.)

Name of Officer: _____

Title: _____

Date: _____

[fol. 1069-11] Circular No. 2661

American Railway Association

R. H. Aishton, President. W. G. Besler, First Vice-President. Hale Holden, Second Vice-President. Alfred P. Thom, General Counsel. H. J. Forster, Secretary and Treasurer.

Office of the Secretary, 30 Vesey Street, New York, June 6, 1927.

To the Members:

Referring to Circular No. 2649, dated April 27, 1927, accompanying letter ballot covering the revision of Per Diem Rule 5 and Rule 2 of the Code of Switching Reclaim Rules, as recommended by the Transportation Division, to take effect January 1, 1928, if approved by a majority of the membership, that majority to represent two-thirds of the freight cars owned or controlled by the members of the Association.

The total membership of the Association is 407 and the cars owned or controlled by members is 2,567,085. The majority requisite for approval is 205 memberships owning or controlling 1,711,344 cars.

The vote on the revision of the rules is as follows:

Yes	343	Memberships, representing	2,430,554 cars
No	15	" "	87,465 "
Not voting	49	" "	49,066 "

The proposition to amend Per Diem Rule 5 and Rule 2 of the Code of Switching Reclaim Rules, as indicated in Circular No. 2649, is approved.

Please take notice, therefore, that the amended rules become effective January 1, 1928.

The rules, as amended, are printed herewith.

By direction of the President.

Respectfully, H. J. Forster, Secretary.

Previous Form	Amended Form
Rule 5.	
(a) An amount for each car in switching service may be reclaimed by each individual switching road from the road for which the service was performed. This amount shall be based upon the average number of days, not to exceed five (5), for cars handled in Terminal Switching Service except as otherwise provided in paragraph (b), actually required in such switching service to be determined annually, or at such other periods as may be agreed upon by the roads interested, by an examination of the records of each individual switching road, by the roads interested, for each local territory, except that roads in any local territory may agree to the settlement of terminal switching reclaims on the basis of actual time involved in handling the cars during the month for which the reclaim is made, subject to an agreed maximum number of days on any one car, the reclaim on pick-up and diverted cars shall be determined by a plan to be agreed upon by the interested roads, and the total reclaim for any month shall not exceed an average of five (5) days per car.	No change.
(b) An amount equal to the actual per diem accruing on each car loaded with live stock handled in switching service (but not including cars loaded with emigrant movables or exhibition live stock, which are subject to Section (a) of this rule) may be reclaimed by each individual switching road from the road for which the service was performed, provided that such reclaim shall not exceed one (1) day on any one car.	No change.
None.	*An amount equal to the actual per diem accruing on each car containing less-than-car-load freight (including cotton), commonly known as a trap or ferry car, handled in switching service,*

Previous Form	Amended Form
	originating at or destined to points outside the switching district, may be reclaimed by each individual switching road from the road for which the service was performed, provided the movement is duly authorized by tariff publication and subject to a switching charge, and further provided that such reclaim shall not exceed three days on any one car.
(c) Except as provided in paragraph (d), an intermediate switching road may reclaim one (1) day's per diem only from the delivering road on any car on which per diem accrues while in intermediate switching service. A terminal switching road delivering a car to an intermediate switching road for delivery to a carrier road shall pay the reclaim to the intermediate switching road and may reclaim such amount from the carrier road for which the service was performed.	No change.
(d) No reclaim shall be allowed for an inter-terminal switching movement.	(d) No reclaim shall be allowed for an inter-terminal switching movement *except as provided in paragraph (b) of this rule.*
(e) No reclaim shall be allowed to a non-subscriber.	No change.
(f) Unless otherwise unanimously agreed to by the interested roads, the Code of Switching Reclaim Rules of the American Railway Association shall govern in determining switching reclaim allowances.	No change.

Switching Reclaim Rule 2

Previous Form	Amended Form
Section 1. No reclaim shall be allowed for an inter-terminal switching movement.	Section 1. No reclaim shall be allowed for an inter-terminal switching movement *except as provided in per diem rule 5, paragraph (b).*
Section 2. No reclaim shall be allowed to a non-subscriber.	No change.

[fol. 1069–14] Circular No. 2650

American Railway Association

R. H. AISHTON, President. W. G. BESLER, First Vice-President. HALE HOLDEN, Second Vice-President. ALFRED P. THOM, General Counsel. H. J. FORSTER, Secretary and Treasurer.

Office of the Secretary, 30 Vesey Street, New York, April 27, 1927

To the Members:

At the Annual Session of the Transportation Division, April 7, 1927, the following resolution was adopted:

"Resolved, That the changes in Per Diem Rule 13 as recommended by the Committee on Records be approved for submission to the members of the Association for a vote by letter ballot."

A statement is attached showing the present rule with the changes recommended.

Effective July 1, 1925, Per Diem Rule 5 and Rule 2 of the Code of Switching Reclaim Rules were changed to provide for the payment of intermediate switching reclaims. At that time, no specific provision was made in Per Diem Rule 13 to cover the presentation and subsequent handling of these reclaims, and to overcome the difficulties experienced, the Committee recommends that the following changes in Per Diem Rule 13 be approved for submission to the members of the Association for a vote by letter ballot. The Committee also recommends that this rule be further amended to provide for the handling of reclaims under Per Diem Rule 14, so that the rule will then cover all reclaims accruing under the Per Diem Rules.

The proposed changes are submitted herewith for a vote by letter ballot in the usual manner; the amended rule to take effect as of July 1, 1927, if approved by a majority of the membership, that majority to represent two-thirds of the freight cars owned or controlled by the members of the Association.

A form of ballot is enclosed herewith. This ballot must be used if the vote is to be recorded, and should be in the hands of the Secretary, 30 Vesey Street, New York, on or before noon, Eastern Standard Time, May 26, 1927.

Respectfully, H. J. Forster, Secretary.

Present Form	Proposed Form
(a) Switching reclaim under Rule 5 shall be presented within three months from the last day of the month in which the per diem accrued, and shall be allowed as presented within thirty (30) days after receipt except that supplementary *switching* reclaims covering errors or omissions shall be presented within six months from the last day of the month in which the per diem accrued *and* shall be allowed as presented within thirty (30) days after receipt.	(a) *Terminal and Intermediate* Switching Reclaim *Statements* under Rule 5 shall be *prepared separately and* presented within three (3) months from the last day of the month in which the per diem accrued, except that supplementary reclaim *statements* covering errors *and*/or omissions shall be presented within six (6) months from the last day of the month in which the per diem accrued. *Original and supplementary switching reclaim statements* shall be allowed as presented within thirty (30) days after receipt.
The road paying the reclaim may present a counter reclaim to adjust errors *in the original reclaim statement* provided *such counter reclaim* is presented within three months from the last day of the month in which the *original* was received.	The road paying *a terminal or an intermediate switching* reclaim may present a counter reclaim to *cover* errors *or adjustments therein*, provided *it* is presented within three (3) months from the last day of the month in which the *reclaim on which counter reclaim is in order*, was received.
The privilege of continuance of the counter reclaim shall cease when either road interested fails to return it to the other road within two months from the last day of the month in which it was last received, the delinquent road to be responsible for the unadjusted amount.	No change.
None.	*Note: Under this rule an intermediate reclaim shall not be supplementary to an original terminal reclaim, nor a terminal reclaim supplementary to an original intermediate reclaim.*
(*Per Diem Rule 14, Paragraph (k)*). Reclaim under *this* rule shall be presented *to the erring road* within six (6) months from the last day of the month in which disposition is received by the	(*b*) Reclaim under Rule *No. 14* shall be presented within six months from the last day of the month in which disposition of car is received by the holding road, except where demurrage

Present Form	Proposed Form
holding road, except where demurrage adjustment is involved, in which case reclaim shall be presented within six (6) months from the last day of the month in which the demurrage is cancelled or refunded.	adjustment is involved, in which case reclaim shall be presented within six (6) months from the last day of the month in which the demurrage is cancelled or refunded. *The road receiving reclaim shall present exceptions to the claimant within four months from the last day of the month in which reclaim was received or allow the amount claimed in the next open per diem report.* *The privilege of continuance of reclaim thereafter shall cease when either road interested fails to return it to the other within two months from the last day of the month in which it was last received, the delinquent road to be responsible for the unadjusted amount.*
(b) Reclaim under Rule 15 shall be presented within six months from the last day of the month in which cars were delivered by the holding road. The road receiving reclaim shall check and present exceptions to the claimant within four months from the last day of the month in which the reclaim was received and shall allow in the next open Per Diem Report the amount not covered by exceptions. The privilege of continuance of reclaim thereafter shall cease when either road interested fails to return it to the other within two months from the last day of the month in which it was last received, the delinquent road to be responsible for the unadjusted amount.	(c) No other change.
(c) *Special reclaim shall be presented in accordance with the provisions of Rule 14, paragraph (k). The road receiving reclaim shall check and present exceptions to the claimant within four months from the last day of the month*	*Eliminated.*

Present Form	Proposed Form
in which the reclaim was received and shall allow in the next open Per Diem report the amount not covered by exceptions. *The privilege of continuance of reclaim thereafter shall cease when either road interested fails to return it to the other within two months from the last day of the month in which it was last received, the delinquent road to be responsible for the unadjusted amount.*	
(d) The provisions of paragraphs (a), (b), or (c) will not prevent the continuance of any reclaim after the period named if it has been previously opened when the reclaim eventually rests upon some road other than the one originally addressed, except that the reclaim shall be presented to such other road within two months from the last day of the month in which it was last received by claimant. Further handling shall be subject to the provisions of paragraphs (a), (b) and (c).	No change.
(e) Reclaims shall be made by the designated officer of the road which pays the per diem to the designated officer of the road from which the allowance is reclaimed, unless specifically agreed by the interested roads to permit the presentation and acceptance of such reclaims by local representatives.	No change.

[fol. 1069-18] American Railway Association

Letter Ballot

Reply to Circular No. 2650 to be returned to H. J. Forster, Secretary, 30 Vesey Street, New York City, on or before noon, Eastern Standard Time, My 26, 1927.

_____

_____ R_____

On the proposition that Per Diem Rule 13 be amended, as recommended by the Committee on Records of the Transportation Division, and approved at the annual session of that Division on April 7, 1927, as indicated in Circular No. 2650, to take effect July 1, 1927, the vote of this Company is

Affirmative

Negative

(If you are in favor please cross off word "Negative" and vice versa.)

Name of Officer: _____

Title: _____

Date: _____

[fol. 1069-19] Circular No. 2662

American Railway Association

R. H. Aishton, President. W. C. Besler, First Vice-President. Hale Holden, Second Vice-President, Alfred P. Thom, General Counsel, H. J. Forster, Secretary and Treasurer.

Office of the Secretary, 30 Vesey Street, New York, June 6, 1927

To the Members:

Referring to Circular No. 2650, dated April 27, 1927, accompanying letter ballot covering the revision of Per Diem Rule 13, as recommended by the Transportation Division, to take effect July 1, 1927, if approved by a majority of the membership, that majority to represent two-thirds of the freight cars owned or controlled by the members of the Association.

The total membership of the Association is 407, and the cars owned or controlled by members is 2,567,085. The majority requisite for approval is 205 memberships owning or controlling 1,711,344 cars.

The vote on the revision of the rule is as follows:

Yes	361	Memberships, representing	2,519,574 cars.
No	1	" "	3 "
Not voting	45	" "	47,508 "

The proposition to amend Per Diem Rule 13, as indicated in Circular No. 2650, is approved.

Please take notice, therefore, that the amended rule becomes effective July 1, 1927.

The rule, as amended, is printed herewith.

By direction of the President.

Respectfully, H. J. Forster, Secretary.

Previous Form	Amended Form
(a) Switching reclaim under Rule 5 shall be presented within three months from the last day of the month in which the per diem accrued, and shall be allowed as presented within thirty (30) days after receipt except that supplementary *switching* reclaims covering errors or omissions shall be presented within six months from the last day of the month in which the per diem accrued *and* shall be allowed as presented within thirty (30) days after receipt.	(a) *Terminal and Intermediate* Switching Reclaim *Statements* under Rule 5 shall be *prepared separately and* presented within three (3) months from the last day of the month in which the per diem accrued, except that supplementary reclaim *statements* covering errors *and*/or omissions shall be presented within six (6) months from the last day of the month in which the per diem accrued. *Original and supplementary switching reclaim statements* shall be allowed as presented within thirty (30) days after receipt.
The road paying the reclaim may present a counter reclaim to adjust errors *in the original reclaim statement* provided *such counter reclaim* is presented within three months from the last day of the month in which the *original* was received.	The road paying *a terminal or an intermediate switching* reclaim may present a counter reclaim to *cover* errors *or adjustments therein*, provided *it* is presented within three (3) months from the last day of the month in which the *reclaim on which counter reclaim is in order*, was received.
The privilege of continuance of the counter reclaim shall cease when either road interested fails to return it to the other road within two months from the last day of the month in which it was last received, the delinquent road to be responsible for the unadjusted amount.	No change.
None.	*Note: Under this rule an intermediate reclaim shall not be supplementary to an original terminal reclaim, nor a terminal reclaim supplementary to an original intermediate reclaim.*
(*Per Diem Rule 14, Paragraph (k)*). Reclaim under *this* rule shall be presented *to the erring road* within six (6) months from the last day of the month in which disposition is received by the	(*b*) Reclaim under Rule *No. 14* shall be presented within six months from the last day of the month in which disposition of car is received by the holding road, except where demurrage

Previous Form	Amended Form
holding road, except where demurrage adjustment is involved, in which case reclaim shall be presented within six (6) months from the last day of the month in which the demurrage is cancelled or refunded.	adjustment is involved, in which case reclaim shall be presented within six (6) months from the last day of the month in which the demurrage is cancelled or refunded. *The road receiving reclaim shall present exceptions to the claimant within four months from the last day of the month in which reclaim was received or allow the amount claimed in the next open per diem report.* *The privilege of continuance of reclaim thereafter shall cease when either road interested fails to return it to the other within two months from the last day of the month in which it was last received, the delinquent road to be responsible for the unadjusted amount.*
(b) Reclaim under Rule 15 shall be presented within six months from the last day of the month in which cars were delivered by the holding road. The road receiving reclaim shall check and present exceptions to the claimant within four months from the last day of the month in which the reclaim was received and shall allow in the next open Per Diem Report the amount not covered by exceptions. The privilege of continuance of reclaim thereafter shall cease when either road interested fails to return it to the other within two months from the last day of the month in which it was last received, the delinquent road to be responsible for the unadjusted amount.	(c) No other change.
(c) Special reclaim shall be presented in accordance with the provisions of Rule 14, paragraph (k). The road receiving reclaim shall check and present exceptions to the claimant within four months from the last day of the month	*Eliminated.*

[fol. 1069–22]

Previous Form	Amended Form
in which the reclaim was received and shall allow in the next open Per Diem report the amount not covered by exceptions. *The privilege of continuance of reclaim thereafter shall cease when either road interested fails to return it to the other within two months from the last day of the month in which it was last received, the delinquent road to be responsible for the unadjusted amount.*	
(d) The provisions of paragraphs (a), (b), or (c) will not prevent the continuance of any reclaim after the period named if it has been previously opened when the reclaim eventually rests upon some road other than the one originally addressed, except that the reclaim shall be presented to such other road within two months from the last day of the month in which it was last received by claimant. Further handling shall be subject to the provisions of paragraphs (a), (b) and (c).	No change.
(e) Reclaims shall be made by the designated officer of the road which pays the per diem to the designated officer of the road from which the allowance is reclaimed, unless specifically agreed by the interested roads to permit the presentation and acceptance of such reclaims by local representatives.	No change.

[fol. 1069–23] Circular No. 2651

American Railway Association

R. H. Aishton, President. W. G. Besler, First Vice-President. Hale Holden, Second Vice-President. Alfred P. Thom, General Counsel. H. J. Forster, Secretary and Treasurer.

Office of the Secretary, 30 Vesey Street, New York, April 27, 1927.

To the Members:

At the Annual Session of the Transportation Division, April 7, 1927, the following resolution was adopted:

"Resolved, That the changes in Per Diem Rule 14, as recommended by the Committee on Records, be approved for submission to the members of the Association for a vote by letter ballot."

A statement is attached showing the present rule, with the changes recommended.

Attention is directed to the following features of the revised rule:

1. It places responsibility for per diem on the erring road in every instance where cars are detained account railroad error.
2. It provides for the elimination of Rule 3 from the Code of Switching Reclaim Rules, incorporating the provisions thereof in Rule 14.
3. It provides for reclaim where cars are detained on subscriber road due to error committed by a non-subscriber, and for reclaim on cars detained on a non-subscriber road account error of a subscriber road.
4. It defines "Junction station where received" and "Billed Destination."
5. All interpretations in effect at the present time are written into the proposed rule.

The proposed changes are submitted herewith for a vote by letter ballot in the usual manner; the amended rule to take effect as of July 1, 1927, if approved by a majority of the membership, that majority to represent two-thirds of the freight cars owned or controlled by the members of the Association.

A form of ballot is enclosed herewith. This ballot must be used if the vote is to be recorded, and should be in the hands of the Secretary, 30 Vesey Street, New York, on or before noon, Eastern Standard Time, May 26, 1927.

Respectfully, H. J. Forster, Secretary.

Present Form	Proposed Form
Unless otherwise agreed, reclaim for per diem on a car held by reason of a railroad error shall be settled as follows:	Unless otherwise agreed, reclaim for per diem on a car held by reason of a railroad error shall be settled as follows:
	Sec. 1. On a car held at any point en route to a billed destination, or customs port. (Billed destination or customs port, means any point within the switching limits thereof.)
	(a) When a freight car is held at any point en route to billed destination or customs port by reason of a railroad error which prevents proper forwarding or proper tender or delivery, notice shall be sent or given by the holding road to the erring road, if known, or otherwise the delivering road or last rebilling road, prior to midnight of the second day after receipt of or arrival of car. Upon doing this, the holding road may reclaim against the erring road for an amount at the established per diem rate from receipt of car to and including receipt of proper data, and in addition thereto, an amount for actual detention, at the established per diem rate, not to exceed one (1) day from date of receipt of proper data to date of disposal of car. The return of the car to the delivering road prior to midnight of the second day after receipt, instead of holding car and notifying the delivering road, constitutes notice under this rule. If holding road neglects to send or give notice prior to midnight of the second day after receipt of or arrival of car, it will be entitled to reclaim only from the date such notice is sent or given.

Present Form	Proposed Form
(b) If the road delivering *the car in error or without proper data* orders *it* returned or delivered to another road, the *receiving* road *may reclaim per diem accruing to the date of receipt of such order and in addition thereto the actual per diem not to exceed two (2) days accruing from receipt of order to date of delivery of car.*	(b) If the delivering road *furnished necessary data for forwarding or* orders *the car* returned or delivered to another road *before the holding road takes action in accordance with Paragraph* (a), the *holding* road *is entitled to the same reclaim as though it had requested disposition on the day the necessary instructions for disposition were received.*
(c) When a loaded car is held en route on order received from another railroad, and such detention is due to railroad error, the holding road will be entitled to reclaim against the erring road an amount equal to the established per diem rate from the date car is held to and including the date *following that* on which disposition is received by the holding road.	(c) When a loaded car is held en route on order received from another railroad, and such detention is due to railroad error, the holding road will be entitled to reclaim against the erring road, an amount equal to the established per diem rate from the date *such car was received at the station where* held to and including the date on which disposition is received by the holding road, *and in addition thereto, an amount for actual detention at the established per diem rate not to exceed one (1) day from date of receipt of proper disposal order to date of disposal of car.*
(d) Reclaim under this rule shall be presented to the erring road within six (6) months from the last day of the month in which disposition is received by the holding road, except where demurrage adjustment is involved, in which case reclaim shall be presented within six (6) months from the last day of the month in which the demurrage is cancelled or refunded. *(See Rule 13, Paragraph (c)).*	Eliminated. (See proposed changes in Rule 13, submitted in Circular No. 2650.)
(a) *When a loaded freight* car *is* delivered *in interchange* contrary to an embargo or without proper data for	*Note:* Cars delivered contrary to *existing* embargoes, empty cars delivered *for home route* in error, *empty cars*

[fol. 1069–26]

Present Form	Proposed Form
forwarding or disposition, *or an* empty *freight* car is delivered in error (*except as provided in Rule 3 of the Code of Switching Reclaim Rules*), *the receiving road shall notify the delivering road immediately by telegram (or by telephone confirmed in writing), or by messenger in writing. Upon doing this, the receiving road may reclaim against the delivering road for the actual time intervening between the receipt of the car and receipt of proper data except that when notice is not given within the first forty-eight (48) hours, reclaim may only be made from date of notice.*	*delivered for return loading in error, and cars delivered as empty which contain load or part load are subject to reclaim only when held within the switching limits of station where received.*
	Sec. 2. On a loaded car held at *any point within the switching limits of* billed destination *or customs port.*
(*c*) When a loaded freight car is held at billed destination, by reason of a railroad error, which prevents proper tender or delivery, *telegraphic advice (or telephonic advice confirmed the same day by mail) sufficient to enable erring road to furnish correct information,* must be sent by the holding road *within five (5) days* after arrival of car *at station where held, to the agent at point of origin as indicated on the billing or to the proper officer of the originating road.*	(*a*) When a loaded freight car is held at *any point within the switching limits of* billed destination *or customs port by* reason of a railroad error which prevents proper tender or delivery, *notice* must be sent *or given* by the holding road *prior to midnight of the fifth day* after *receipt of or* arrival of the car *to secure disposition of car, and upon doing this, the holding road may reclaim against the erring road for* an amount *at* the established per diem rate from date such car was received at the station where held to and including the date on which disposition is received by the holding road, *and in addition thereto an amount for actual detention at the established per diem rate not to exceed one day from date of receipt of proper data to date of disposal of car.*
(*f*) *The road responsible for the error will pay to the holding road* an amount equal to the established per diem rate from *the* date such car was received at the station where held to and including the date *following that* on which disposition is received by the holding road.	

Present Form	Proposed Form
(g) If the holding road *fails* to *send advice within five* (5) days after arrival of *the* car it will be allowed per diem for the first five (5) days, and in addition thereto per diem for each day from date *advice* is sent to and including the date *following that* on which disposition is received *by the holding road.*	(b) If holding road *neglects* to send *or give notice prior to midnight of the fifth* day after *receipt of or* arrival of car, it will be allowed per diem for the first five (5) days, and in addition thereto, per diem for each day from date *notice* is sent *or given* to and including the date on which disposition is received, *and in addition thereto, an amount for actual detention at the established per diem rate not to exceed one (1) day from date of receipt of proper data to date of disposal of car.*
(d) If shipment was rebilled en route, the advice must be sent to the agent at the last rebilling station, or to the proper officer of the road on which shipment was last rebilled. If the rebilling road cannot furnish proper disposal orders, it must transmit such advice by telegraph *(or* telephone, confirmed the same day *by mail) within forty-eight (48) hours after receipt, to the agent at the point of origin or to the proper officer of the originating road.*	
(e) When more than one rebilling is involved, the procedure outlined above must be followed by each rebilling road until the error has been located. The erring road must then telegraph the proper information to the holding road.	
(h) If disposition is received by the holding road without notice having been sent, the holding road will be entitled to reclaim for the actual time car is held, with a maximum of five (5) days.	
	(c) The notice under Paragraphs (a) and (b) of this section shall be sent or given either to the delivering road, to the Agent at point of origin as indicated by the billing, or to the proper officer of the originating, last rebilling or reconsigning road, either by telegraph, *by* telephone confirmed *in writing, the same day, or by messenger in writing, and must contain sufficient information to enable the erring road to furnish disposition.*

[fol. 1069–28]

Present Form	Proposed Form
None.	*Sec. 3. Errors involving non-subscriber railroads.* *(a) When detention is caused by error of a non-subscriber, responsibility for per diem involved shall be assumed by the subscriber accepting the car from the non-subscriber.* *The non-subscriber road shall be responsible to its subscriber connection for the per diem involved.* *(b) When a car is held on non-subscriber railroad because of railroad error on the part of a subscriber the delivering subscriber shall relieve the non-subscriber of the per diem involved and may reclaim under this rule from the erring road.* *Note: Under this section the procedure covering notification, etc., prescribed in Sections 1 or 2 shall govern.*
None.	*Sec. 4. Empty cars rejected by shipper:* *When a car is delivered empty to a switching road for return loading and is returned empty to carrier road by reason of shippers' cancellation of order or rejection by shipper because unsuitable for loading as specified by the switching road when received from the carrier road, the switching road may reclaim against the carrier road, for an amount at the established per diem rate accruing from receipt of car to its return, but not to exceed three (3) days.*
None.	*Sec. 5. On a car handled in terminal switching service:* *The reclaim accruing under this rule on a car handled in terminal switching service, can only be made for the detention in excess of the reclaim allowable under Per Diem Rule 5.*

Present Form	Proposed Form
	Sec. 6. General.
	(a) Under Sections 1, 2, and 3, when notice is sent or given to other than the known erring road and it is necessary for it to transmit the notice to the erring road or the road from which it received the car, such notice must be sent or given not later than the next calendar day following receipt of notice. This procedure must be followed by each road involved until the erring road has been notified. When part of the detention to the car is chargeable to *the neglect of* a road to *so* transmit *notice*, the erring road *may* reclaim *from* such road for the number of days in excess of *one (1) that* car was delayed due to *such negligence.*
(i) When part of the detention is chargeable to a *rebilling* road, *due to its failure* to transmit *advice within 48 hours after receipt*, the erring road *will be entitled to* reclaim *against* such *rebilling* road for the number of days, in excess of *two days*, car was delayed due to *its failure.*	
Note: This rule applies only to cars of railroad ownership, including owner's cars on owner's tracks, but it does not apply to cars bunched in transit, *nor* cars detained account of weather interference.	(b) Rule *14* applies only to cars of railroad ownership *handled on per diem basis*, including owner's cars on owner's tracks, but it does not apply to cars bunched in transit, cars detained account of weather interference, *or cars refused by consignee due to delay or damage in transit.*

[fol. 1069-30] American Railway Association

Letter Ballot

Reply to Circular No. 2651 to be returned to H. J. Forster, Secretary, 30 Vesey Street, New York City, on or before noon, Eastern Standard Time, May 26, 1927.

_____

_____ R_____

On the proposition that Per Diem Rule 14 be amended, as recommended by the Committee on Records of the Transportation Division, and approved at the annual session of that Division on April 7, 1927, as indicated in Circular No. 2651, to take effect July 1, 1927, the vote of this Company is

Affirmative

Negative

(If you are in favor please cross off word "Negative" and vice versa.)

Name of Officer: _____

Title: _____

Date: _____

[fol. 1069-81]

Circular No. 2663

American Railway Association

R. H. AISHTON, President. W. G. BESLER, First Vice-President. HALE HOLDEN, Second Vice-President. ALFRED P. THOM, General Counsel. H. J. FORSTER, Secretary and Treasurer.

Office of the Secretary, 30 Vesey Street, New York, June 6, 1927.

To the Members:

Referring to Circular No. 2651, dated April 27, 1927, accompanying letter ballot covering the revision of Per Diem Rule 14, as recommended by the Transportation Division, to take effect July 1, 1927, if approved by a majority of the membership, that majority to represent two-thirds of the freight cars owned or controlled by the members of the Association.

The total membership of the Association is 407 and the cars owned or controlled by members is 2,567,085. The majority requisite for approval is 205 memberships owning or controlling 1,711,344 cars.

The vote on the revision of the rule is as follows:

Yes	358	Memberships, representing	2,517,991 cars.
No	4	" "	1,586 "
Not voting	45	" "	47,508 "

The proposition to amend Per Diem Rule 14, as indicated in Circular No. 2651, is approved.

Please take notice, therefore, that the amended rule becomes effective July 1, 1927.

The rule, as amended, is printed herewith.

By direction of the President.

Respectfully, H. J. Forster, Secretary.

Previous Form	Amended Form
Unless otherwise agreed, reclaim for per diem on a car held by reason of a railroad error shall be settled as follows:	Unless otherwise agreed, reclaim for per diem on a car held by reason of a railroad error shall be settled as follows:
	Sec. 1. On a car held at any point en route to a billed destination, or customs port. (Billed destination or customs port, means any point within the switching limits thereof.)
	(a) When a freight car is held at any point en route to billed destination or customs port by reason of a railroad error which prevents proper forwarding or proper tender or delivery, notice shall be sent or given by the holding road to the erring road, if known, or otherwise the delivering road or last rebilling road, prior to midnight of the second day after receipt of or arrival of car. Upon doing this, the holding road may reclaim against the erring road for an amount at the established per diem rate from receipt of car to and including receipt of proper data, and in addition thereto, an amount for actual detention, at the established per diem rate, not to exceed one (1) day from date of receipt of proper data to date of disposal of car. The return of the car to the delivering road prior to midnight of the second day after receipt, instead of holding car and notifying the delivering road, constitutes notice under this rule. If holding road neglects to send or give notice prior to midnight of the second day after receipt of or arrival of car, it will be entitled to reclaim only from the date such notice is sent or given.

Previous Form	Amended Form
(b) If the road delivering *the car in error or without proper data* orders *it* returned or delivered to another road, the *receiving* road *may reclaim per diem accruing to the date of receipt of such order and in addition thereto the actual per diem not to exceed two (2) days accruing from receipt of order to date of delivery of car.*	(b) If the delivering road *furnished necessary data for forwarding or* orders *the car* returned or delivered to another road *before the holding road takes action in accordance with Paragraph (a), the holding road is entitled to the same reclaim as though it had requested disposition on the day the necessary instructions for disposition were received.*
(*j*) When a loaded car is held en route on order received from another railroad, and such detention is due to railroad error, the holding road will be entitled to reclaim against the erring road an amount equal to the established per diem rate from the date car is held to and including the date *following that* on which disposition is received by the holding road.	(*c*) When a loaded car is held en route on order received from another railroad, and such detention is due to railroad error, the holding road will be entitled to reclaim against the erring road, an amount equal to the established per diem rate from the date *such car was received at the station where* held to and including the date on which disposition is received by the holding road, *and in addition thereto, an amount for actual detention at the established per diem rate not to exceed one (1) day from date of receipt of proper disposal order to date of disposal of car.*
(k) Reclaim under this rule shall be presented to the erring road within six (6) months from the last day of the month in which disposition is received by the holding road, except where demurrage adjustment is involved, in which case reclaim shall be presented within six (6) months from the last day of the month in which the demurrage is cancelled or refunded. (See Rule 13, Paragraph (c).)	Eliminated. (See proposed changes in Rule 13, submitted in Circular No. 2650.)
(a) *When a loaded freight* car *is* delivered *in interchange* contrary to an embargo or without proper data for	*Note:* Cars delivered contrary to *existing* embargoes, empty cars delivered *for home route* in error, *empty*

Previous Form	Amended Form
forwarding or disposition, *or an* empty *freight* car is delivered in error (*except as provided in Rule 3 of the Code of Switching Reclaim Rules*), *the receiving road shall notify the delivering road immediately by telegram (or by telephone confirmed in writing), or by messenger in writing. Upon doing this, the receiving road may reclaim against the delivering road for the actual time intervening between the receipt of the car and receipt of proper data except that when notice is not given within the first forty-eight (48) hours, reclaim may only be made from date of notice.*	*cars delivered for return loading in error, and cars delivered as empty which contain load or part load are subject to reclaim only when held within the switching limits of station where received.*
	Sec. 2. On a loaded car held at *any point within the switching limits of* billed destination *or customs port.*
(c) When a loaded freight car is held at billed destination, by reason of a railroad error, which prevents proper tender or delivery, *telegraphic advice (or telephonic advice confirmed the same day by mail) sufficient to enable erring road to furnish correct information,* must be sent by the holding road *within five (5) days* after arrival of car *at station where held, to the agent at point of origin as indicated on the billing or to the proper officer of the originating road.*	(a) When a loaded freight car is held at *any point within the switching limits of* billed destination *or customs port by* reason of a railroad error which prevents proper tender or delivery, *notice* must be sent *or given* by the holding road *prior to midnight of the fifth day* after *receipt of or* arrival of the car *to secure disposition of car, and upon doing this, the holding road may reclaim against the erring road for* an amount *at* the established per diem rate from date such car was received at the station where held to and including the date on which disposition is received by the holding road, *and in addition thereto an amount for actual detention at the established per diem rate not to exceed one day from date of receipt of proper data to date of disposal of car.*
(f) *The road responsible for the error will pay to the holding road* an amount equal to the established per diem rate from the date such car was received at the station where held to and including the date *following that* on which disposition is received by the holding road.	

Previous Form	Amended Form
(g) If the holding road *fails* to *send advice within five* (5) days after arrival of *the* car it will be allowed per diem for the first five (5) days, and in addition thereto per diem for each day from date *advice* is sent to and including the date *following that* on which disposition is received *by the holding road.*	(b) If holding road *neglects* to send *or give notice prior to midnight of the fifth* day after *receipt of or* arrival of car, it will be allowed per diem for the first five (5) days, and in addition thereto, per diem for each day from date *notice* is sent *or given* to and including the date on which disposition is received, *and in addition thereto, an amount for actual detention at the established per diem rate not to exceed one (1) day from date of receipt of proper data to date of disposal of car.*
(d) If shipment was rebilled en route, the advice must be sent to the agent at the last rebilling station, or to the proper officer of the road on which shipment was last rebilled. If the rebilling road cannot furnish proper disposal orders, it must transmit such advice by telegraph *(or* telephone, confirmed the same day *by mail) within forty-eight (48) hours after receipt, to the agent at the point of origin or to the proper officer of the originating road.*	
(e) When more than one rebilling is involved, the procedure outlined above must be followed by each rebilling road until the error has been located. The erring road must then telegraph the proper information to the holding road.	
(h) If disposition is received by the holding road without notice having been sent, the holding road will be entitled to reclaim for the actual time car is held, with a maximum of five (5) days.	
	(c) The notice under Paragraphs (a) and (b) of this section shall be sent or given either to the delivering road, to the Agent at point of origin as indicated by the billing, or to the proper officer of the originating, last rebilling or reconsigning road, either by telegraph, *by* telephone confirmed *in writing, the same day, or by messenger in writing, and must contain sufficient information to enable the erring road to furnish disposition.*

[fol. 1069–36]

Previous Form	Amended Form
None.	*Sec. 3. Errors involving non-subscriber railroads.* *(a) When detention is caused by error of a non-subscriber, responsibility for per diem involved shall be assumed by the subscriber accepting the car from the non-subscriber.* *The non-subscriber road shall be responsible to its subscriber connection for the per diem involved.* *(b) When a car is held on non-subscriber railroad because of railroad error on the part of a subscriber the delivering subscriber shall relieve the non-subscriber of the per diem involved and may reclaim under this rule from the erring road.* *Note: Under this section the procedure covering notification, etc., prescribed in Sections 1 or 2 shall govern.*
None.	*Sec. 4. Empty cars rejected by shipper:* *When a car is delivered empty to a switching road for return loading and is returned empty to carrier road by reason of shippers' cancellation of order or rejection by shipper because unsuitable for loading as specified by the switching road when received from the carrier road, the switching road may reclaim against the carrier road, for an amount at the established per diem rate accruing from receipt of car to its return, but not to exceed three (3) days.*
None.	*Sec. 5. On a car handled in terminal switching service:* *The reclaim accruing under this rule on a car handled in terminal switching service, can only be made for the detention in excess of the reclaim allowable under Per Diem Rule 5.*

Previous Form	Amended Form
	Sec. 6. General.
	(a) *Under Sections 1, 2, and 3, when notice is sent or given to other than the known erring road and it is necessary for it to transmit the notice to the erring road or the road from which it received the car, such notice must be sent or given not later than the next calendar day following receipt of notice. This procedure must be followed by each road involved until the erring road has been notified.* When part of the detention to the car is chargeable to *the neglect of* a road to *so* transmit *notice*, the erring road *may* reclaim *from* such road for the number of days in excess of *one (1) that car* was delayed due to *such negligence.*
(i) When part of the detention is chargeable *to a rebilling* road, *due to its failure* to transmit *advice within 48 hours after receipt*, the erring road *will be entitled to* reclaim *against*, such *rebilling* road for the number of days, in excess of *two days*, car was delayed due to *its failure.*	
Note: This rule applies only to cars of railroad ownership, including owner's cars on owner's tracks, but it does not apply to cars bunched in transit, *nor* cars detained account of weather interference.	(b) Rule *14* applies only to cars of railroad ownership *handled on per diem basis* including owner's cars on owner's tracks, but it does not apply to cars bunched in transit, cars detained account of weather interference, *or cars refused by consignee due to delay or damage in transit.*

[fol. 1069-38]

Circular No. 2652

American Railway Association

R. H. AISHTON, President. W. G. BESLER, First Vice-President. HALE HOLDEN, Second Vice-President. ALFRED P. THOM, General Counsel. H. J. FORSTER, Secretary and Treasurer.

Office of the Secretary, 30 Vesey Street, New York, April 27, 1927.

To the Members:

At the Annual Session of the Transportation Division, April 7, 1927, the following resolution was adopted:

"Resolved, That the changes in Per Diem Rule 15 as recommended by the Committee on Records be approved for submission to the members of the Association for a vote by letter ballot."

A statement is attached showing the present rule with the changes recommended.

The proposed changes are submitted herewith for a vote by letter ballot in the usual manner; the amended rule to take effect as of July 1, 1927, if approved by a majority of the membership, that majority to represent two-thirds of the freight cars owned or controlled by the members of the Association.

A form of ballot is enclosed herewith. This ballot must be used if the vote is to be recorded, and should be in the hands of the Secretary, 30 Vesey Street, New York, on or before noon, Eastern Standard Time, May 26, 1927.

Respectfully, H. J. Forster, Secretary.

Present Form	Proposed Form
(a) A road failing to receive promptly from a connection cars on which it has laid no embargo, shall be responsible to the connection for the per diem on cars so held for delivery, including the home cars of such connection. A road failing to receive promptly from a connection empty cars at home on its road, moving home under Car Service Rules, shall be responsible to the connection for double the per diem on such cars held for delivery after the first day for which reclaim is made.	No change.
(b) If such failure to receive shall continue for more than three days, the delinquent line shall thereafter in addition be responsible for the per diem on all cars wherever in transit which are thus held back for delivery.	No change.
(c) It shall be the duty of the connection intending to reclaim to notify the delinquent line daily, prior to midnight, through the designated representative at the point where cars are offered, of the total number of cars so held for it, and within 48 hours from midnight of the day cars are offered furnish the initials and numbers of the cars.	No change.
None.	*(d) The reclaim accruing under this rule on a car handled in terminal switching service can only be made for the detention in excess of the reclaim allowable under Per Diem Rule 5.*
(d) When the hour at which the receiving road clears the interchange track is so late that the delivering road cannot place on interchange track before midnight, cars which it is holding for delivery, the receiving road shall be responsible for the Per Diem on such cars for the following day, subject to local agreement as to time required to make delivery.	(e) No further change.

[fol. 1069–40] American Railway Association

Letter Ballot

Reply to Circular No. 2652 to be returned to H. J. Forster, Secretary, 30 Vesey Street, New York City, on or before noon, Eastern Standard Time, May 26, 1927.

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_____ R

On the proposition that Per Diem Rule 15 be amended, as recommended by the Committee on Records of the Transportation Division, and approved at the annual session of that Division on April 7, 1927, as indicated in Circular No. 2652, to take effect July 1, 1927, the vote of this Company is

Affirmative

Negative

(If you are in favor please cross off word "Negative" and vice versa.)

Name of Officer: _____

Title: _____

Date: _____

[fol. 1069–41] Circular No. 2664

American Railway Association

R. H. Aishton, President. W. G. Besler, First Vice-President. Hale Holden, Second Vice-President. Alfred P. Thom, General Counsel. H. J. Forster, Secretary and Treasurer.

Office of the Secretary, 30 Vesey Street, New York, June 6, 1927.

To the Members:

Referring to Circular No. 2652, dated April 27, 1927, accompanying letter ballot covering the revision of Per Diem Rule 15, as recommended by the Transportation Division, to take effect July 1, 1927, if approved by a majority of the membership, that majority to represent two-thirds of the freight cars owned or controlled by the members of the Association.

The total membership of the Association is 407, and the cars owned or controlled by members is 2,567,085. The majority requisite for approval is 205 memberships owning or controlling 1,711,344 cars.

The vote on the revision of the rule is as follows:

Yes	355	Memberships, representing	2,480,580 cars.
No	6	" "	38,964 "
Not voting	46	" "	47,541 "

The proposition to amend Per Diem Rule 15, as indicated in Circular No. 2652, is approved.

Please take notice, therefore, that the amended rule becomes effective July 1, 1927.

The rule, as amended, is printed herewith.

By direction of the President.

Respectfully, H. J. Forster, Secretary.

Previous Form	Amended Form
(a) A road failing to receive promptly from a connection cars on which it has laid no embargo, shall be responsible to the connection for the per diem on cars so held for delivery, including the home cars of such connection. A road failing to receive promptly from a connection empty cars at home on its road, moving home under Car Service Rules, shall be responsible to the connection for double the per diem on such cars held for delivery after the first day for which reclaim is made.	No change.
(b) If such failure to receive shall continue for more than three days, the delinquent line shall thereafter in addition be responsible for the per diem on all cars wherever in transit which are thus held back for delivery.	No change.
(c) It shall be the duty of the connection intending to reclaim to notify the delinquent line daily, prior to midnight, through the designated representative at the point where cars are offered, of the total number of cars to be held for it, and within 48 hours from midnight of the day cars are offered furnish the initials and numbers of the cars.	No change.
None.	*(d) The reclaim accruing under this rule on a car handled in terminal switching service can only be made for the detention in excess of the reclaim allowable under Per Diem Rule 5.* (e) No further change.
(d) When the hour at which the receiving road clears the interchange track is so late that the delivering road cannot place on interchange track before midnight, cars which it is holding for delivery, the receiving road shall be responsible for the Per Diem on such cars for the following day, subject to local agreement as to time required to make delivery.	

[fol. 1069–43] Circular No. 2653

American Railway Association

R. H. AISHTON, President. W. G. BESLER, First Vice-President. HALE HOLDEN, Second Vice-President. ALFRED P. THOM, General Counsel. H. J. FORSTER, Secretary and Treasurer.

Office of the Secretary, 30 Vesey Street, New York, April 27, 1927.

To the Members:

At the Annual Session of the Transportation Division, April 7, 1927, the following resolution was adopted:

"Resolved, That the changes in the Code of Switching Reclaim Rules as recommended by the Committee on Records be approved for submission to the members of the Association for a vote by letter ballot."

A statement is attached showing the present rules with the changes recommended.

The revised rules will, if adopted, cover the following features:

1. Present Rule 3 is eliminated from the Code because it is taken care of in a revision of Per Diem Rule 14 which is being submitted in another ballot.

2. Present Rule 5, which provides that terminal switching reclaims will be in addition to other reclaims, has been eliminated and is taken care of in a proposed revision of Per Diem Rules 14 and 15.

3. Present Rule 6 (new Rule 5) is amended to exclude cars of railroad ownership which are subject to a mileage basis of settlement.

4. Present Rule 7 is eliminated for the reason that it is covered by new Rule 5.

5. Old Rule 8 (new Rule 6), covering formula for computing detention under checks to arrive at terminal switching reclaim arbitrary has been revised to include interpretations to the present rule and provides for the inclusion in these checks, of diverted and pick-up cars. It has been demonstrated in connection with checks made during the past three years that in order to arrive at a fair arbitrary, diverted and pick-up cars should be included in these checks; in fact, a majority of the checks that have been made during the past year and a half have, by mutual agreement, included diverted and pick-up cars.

The proposed changes are submitted herewith for a vote by letter ballot in the usual manner; the amended rules to take effect as of July 1, 1927, if approved by a majority of the membership, that majority to represent two-thirds of the freight cars owned or controlled by the members of the Association.

A form of ballot is enclosed herewith. This ballot must be used if the vote is to be recorded, and should be in the hands of the Secretary, 30 Vesey Street, New York, on or before noon, Eastern Standard Time, May 26, 1927.

Respectfully, H. J. Forster, Secretary.

[fol. 1069–44] Code of Switching Reclaim Rules

Definitions

Present Form	Proposed Form
Roads performing switching service, or roads for which such service is performed, are defined as follows:	Roads performing switching service, or roads for which such service is performed, are defined as follows:
(a) Terminal switching roads.	No change.
(b) Intermediate switching roads.	No change.
(c) Carrier roads.	No change.
Terminal Switching Roads	Terminal Switching Roads
A terminal switching road is a road on whose rails, or on private tracks connecting therewith:	No change.
(a) A car received from a carrier road, either direct or through an intermediate road, is unloaded, reconsigned or reshipped.	No change.
(b) A car is loaded, reconsigned or reshipped, and delivered to a carrier road, either direct or through an intermediate road.	No change.
The service performed being within the designated switching limits, *the road performing the service not participating in the freight rate.*	The service performed being within the designated switching limits *and at a switching charge.*
Intermediate Switching Roads	Intermediate Switching Roads
An intermediate switching road is a road handling a car from one railroad to another railroad within the designated switching limits, the road performing the service not participating in the freight rate.	No change.
Carrier Roads	Carrier Roads
A carrier road is:	A carrier road is:
(a) A road which, participating in the freight rate on the inbound shipment, delivers a car to a terminal switching road, either direct or through an in-	No change.

Present Form	Proposed Form
termediate switching road, for unloading, reconsigning or reshipping.	
(b) A road which, participating in the freight rate on the outbound shipment, receives a car from a terminal switching road, either direct or through an intermediate switching road, that has been loaded, reconsigned or reshipped by the terminal switching road.	No change.
Switching Service	Switching Service
Switching service is defined as follows:	Switching service is defined as follows:
(a) Terminal Switching Service.	No change.
The service performed by a terminal switching road, as defined in these rules.	
(b) Intermediate Switching Service.	No change.
The service performed by an intermediate switching road, as defined in these rules.	
(c) Inter-terminal Switching Service.	(c) Inter-terminal Switching Service.
The service performed in handling a car which has been loaded or reshipped within the switching limits on one road for unloading or reshipping within the same switching limits on another road.	The service performed in handling a car which has been loaded or reshipped within the switching limits on one road for unloading or reshipping within the same switching limits on another road *and at a switching charge.*

Switching Reclaim Rules

(Subject to Such Changes as May be Required to Meet Local Conditions)

Present Form	Proposed Form
Rule 1	Rule 1
The carrier road will allow the switching road a reclaim in accordance with Per Diem Rule 5 at the current per diem rate.	No change.
Rule 2	Rule 2
Section 1. No reclaim shall be allowed for an inter-terminal switching movement.	No change.

Present Form	Proposed Form
Section 2. No reclaim shall be allowed to a non-subscriber.	No change.
Rule 3	Rule 3
Rule 1 of this Code will apply to cars which are delivered empty to a switching road for loading, and are returned empty to carrier road by reason of shippers' cancellation of order, or error on the part of carrier road, and to cars which are rejected by shippers account of being unsuitable for specified loading when received from the carrier road.	Rule 1 of this Code will *not* apply to cars which are delivered empty to switching road for loading, and are returned empty to carrier road by reason of shippers' cancellation of order, or error on the part of carrier road, and to cars which are rejected by shippers account of being unsuitable for specified loading when received from the carrier road. (*See Per Diem Rule 14.*)
Rule 4	Rule 4
The right of reclaim is not affected by the fact that in switching service the switching road may collect its charges from the shipper or consignee.	No change.
Rule 5	
The reclaim under Rule 1 of this Code shall be in addition to other reclaims accruing under the Per Diem Rules.	*Eliminated.*
Rule 6	Rule 5
These rules apply to cars of subscriber roads, including cars owned by the switching roads, except they shall not apply to cars loaded with company material (including company coal) for the use of the switching road.	These rules apply *only* to cars *subject to per diem basis of settlement*, including cars owned by the switching road, except they shall not apply to cars loaded with company material (including company coal) for the use of the switching road.
Rule 7	
These rules shall not apply to cars of private ownership or cars of non-subscribers.	*Eliminated.*

Present Form	Proposed Form
Rule 8	Rule 6
Section 1. *The data necessary to establish the terminal reclaim allowance,* when the average number of days is used as the basis, shall be obtained from the records of the switching road as follows:	Section 1. When the average number of days is used as the basis *for settlement of terminal switching reclaims, the arbitrary to be allowed shall be based on the average time required by the switching road to switch cars for all the roads considered as a whole in the switching district involved. Such arbitrary* shall be obtained from the records of the switching road as follows:
(a) A check covering a representative number of seasonal months shall be made under the direction of the American Railway Association, or otherwise as may be agreed upon between the roads interested.	No change.
(b) The check shall *include* all cars *subject to* terminal switching reclaim *under Per Diem Rule 5*, except cars used in local service, *pick-up cars, diverted cars and* cars loaded with live stock, but not excepting cars loaded with emigrant movables or exhibition live stock, *handled during* the months checked.	(b) The check shall *cover* all cars *included in* terminal switching reclaim *statements for* the months *to be* checked, except—
	(1) Cars loaded with live stock, but not excepting cars loaded with emigrant movables or exhibition live stock;
	(2) Trap or Ferry Cars.
	(3) Cars used in local and inter or intra plant service.
	(4) Cars on which the required records are incomplete.
Section 2. In figuring the detention *to each car subject to reclaim, including cars owned by the switching road,* the days shall be computed as follows:	Section 2. In figuring detention, the days shall be computed as follows:
(a) *On* cars received loaded and returned empty, cars received empty and returned loaded, cars received loaded and returned loaded and *cars received*	(a) Cars received loaded and returned empty *to the road from which received or delivered empty to another road within the same switching district, and*

[fol. 1069-48]

Present Form	Proposed Form
empty and returned empty per Rule 3 of this Code, count from date received to date returned as evidenced by Interchange Report.	cars received empty and returned loaded *to the road from which received or delivered loaded to another road within the same switching district*, count from date received to date of delivery.
None.	(*b*) Cars received loaded and returned loaded *to the road from which received or delivered loaded to another road within the same switching district, count from date received to date of delivery.*
(*b*) *On cars received loaded from other than the owner, which after being unloaded are delivered empty to owner within the same switching district*, count from date *of receipt* to date of delivery as evidenced by Interchange Reports.	(*c*) Cars picked up from road haul service and placed in terminal switching service, count from date placed for loading, as evidenced by the demurrage records (*using 7 A. M. Demurrage placement date*) to date delivered *to outbound carrier* as evidenced by interchange reports.
	(*d*) *Cars diverted from terminal switching service to road haul service, count from date of receipt as evidenced by the interchange reports to the date released from inbound load as evidenced by the demurrage records.*
(*c*) *On* cars *received loaded which are* reconsigned or reshipped count from date of receipt as evidenced by the Interchange Reports to date reconsigned or reshipped, *for the inbound movement* count from date *reconsigned or reshipped to date delivered to carrier road on outbound movement* as evidenced by the Interchange Report.	(*e*) On cars *handled in terminal switching service and subsequently* reconsigned or reshipped *in road haul service*, count from date *of receipt* as evidenced by interchange reports *to date released as evidenced by demurrage records.*
	(*f*) *On cars received in road haul service and subsequently* reconsigned or reshipped *in terminal switching service, count from date of release as evidenced by demurrage records*, to date delivered *to outbound carrier*, as evidenced by interchange reports.

Present Form	Proposed Form
None.	*(g) Cars owned by the switching road which are loaded in terminal switching service shall be considered pick-up cars and detention computed per paragraph (c).*
None.	*(h) Cars owned by the switching road which are unloaded in terminal switching service shall be considered diverted cars and detention computed per paragraph (d).*
None.	*(i) Where an intermediate switching road is involved in the terminal switching movement, the receipt from or delivery to the intermediate road shall be considered as receipt from or delivery to the carrier road.*
(d) In computing detention in accordance with this rule, the detention of any car beyond eight (8) days shall be eliminated, except if a car is received *from and returned to the same road loaded in both directions* the detention beyond sixteen (16) days shall be eliminated.	*Section 3.* In computing detention in accordance with this rule, the detention of any car beyond eight (8) days shall be eliminated except if a car received *loaded is made empty, reloaded and returned to the road from which received or delivered to another road,* the detention beyond sixteen (16) days shall be eliminated.
(e) Cars on which the required records are incomplete shall be excluded.	*Eliminated.*
Section *3.* The terminal switching reclaim allowance shall be determined by dividing the total detention, computed in accordance with this rule, by the total number of cars included in the check, cars *which are* received *from and returned to the same road loaded in both directions* to be counted as two (2) cars. The quotient to be carried to two (2) decimals, *and remainder beyond the hundredth of a day to be dropped.*	Section *4.* The terminal switching reclaim allowance shall be determined by dividing the total detention, computed in accordance with this rule, by the total number of cars included in the check, cars received loaded, *which are made empty, reloaded and returned to the road from which received, or delivered to another road,* to be counted as two (2) cars. The quotient to *be expressed in* two decimals, *the second decimal to be increased by one (1) when the third (3rd) decimal is five (5) or more.*

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Present Form	Proposed Form
Rule 9	Rule 7
An arbitration Committee may be appointed by interested roads in any local territory. All questions arising under these rules shall be submitted to such committee through its secretary, who shall briefly set forth the points at issue and each party's interpretation of the rule on which the claim is based. Should one of the parties to the dispute refuse to furnish information, such Arbitration Committee shall use its judgment as to whether or not it can properly decide the question at issue, and shall base its decision upon these rules or as modified under agreement between the roads interested and the abstract submitted, and its decision shall govern, except that either party to the dispute may appeal to the Per Diem Rules Arbitration Committee of the American Railway Association.	No change.

[fol. 1069–51] American Railway Association

Letter Ballot

Reply to Circular No. 2653 to be returned to H. J. Forster, Secretary, 30 Vesey Street, New York City, on or before noon, Eastern Standard Time, May 26, 1927.

_____

_____ R_____

On the proposition that the changes in the Code of Switching Reclaim Rules, as recommended by the Committee on Records of the Transportation Division, and approved at the annual meeting of that Division on April 7, 1927, as indicated in Circular No. 2653, be approved to take effect July 1, 1927, the vote of this Company is

Affirmative

Negative

(If you are in favor please cross off word "Negative" and/vice versa.)

Name of Officer: _____

Title: _____

Date: _____

[fol. 1069–52]

Circular No. 2665

American Railway Association

R. H. AISHTON, President. W. G. BESLER, First Vice-President. HALE HOLDEN, Second Vice-President. ALFRED P. THOM, General Counsel. H. J. FORSTER, Secretary and Treasurer.

Office of the Secretary, 30 Vesey Street, New York, June 6, 1927.

To the Members:

Referring to Circular No. 2653, dated April 27, 1927, accompanying letter ballot covering the revision of the Code of Switching Reclaim Rules as recommended by the Transportation Division, to take effect July 1, 1927, if approved by a majority of the membership, that majority to represent two-thirds of the freight cars owned or controlled by the members of the Association:

The total membership of the Association is 407 and the cars owned or controlled by members is 2,567,085. The majority requisite for approval is 205 memberships owning or controlling 1,711,344 cars.

The vote on the revision of the code is as follows:

Yes	345	Memberships, representing	2,447,784 cars.
No	12	" "	70,535 "
Not voting	50	" "	48,766 "

The proposition to amend the Code of Switching Reclaim Rules, as indicated in Circular No. 2653, is approved.

Please take notice, therefore, that the amended code becomes effective July 1, 1927.

The rules, as amended, are printed herewith.

By direction of the President.

Respectfully, H. J. Forster, Secretary.

Definitions

Previous Form	Amended Form
Roads performing switching service, or roads for which such service is performed, are defined as follows:	Roads performing switching service, or roads for which such service is performed, are defined as follows:
(a) Terminal switching roads.	No change.
(b) Intermediate switching roads.	No change.
(c) Carrier roads.	No change.
Terminal Switching Roads	Terminal Switching Roads
A terminal switching road is a road on whose rails, or on private tracks connecting therewith:	No change.
(a) A car received from a carrier road, either direct or through an intermediate road, is unloaded, reconsigned or reshipped.	No change.
(b) A car is loaded, reconsigned or reshipped, and delivered to a carrier road, either direct or through an intermediate road.	No change.
The service performed being within the designated switching limits, *the road performing the service not participating in the freight rate.*	The service performed being within the designated switching limits *and at switching charge.*
Intermediate Switching Roads	Intermediate Switching Roads
An intermediate switching road is a road handling a car from one railroad to another railroad within the designate switching limits, the road performing the service not participating in the freight rate.	No change.
Carrier Roads	Carrier Roads
A carries road is:	A carrier road is:
(a) A road which, participating in the freight rate on the inbound shipment, delivers a car to a terminal switching road, either direct or through	No change.

Previous Form	Amended Form
an intermediate switching road, for unloading, reconsigning or reshipping.	No change.
(b) A road which, participating in the freight rate on the outbound shipment, receives a car from a terminal switching road, either direct or through an intermediate switching road, that has been loaded, reconsigned or reshipped by the terminal switching road.	
Switching Service	Switching Service
Switching service is defined as follows:	Switching service is defined as follows:
(a) Terminal Switching Service.	No change.
The service performed by a terminal switching road, as defined in these rules.	
(b) Intermediate Switching Service.	No change.
The service performed by an intermediate switching road, as defined in these rules.	
(c) Inter-terminal Switching Service.	(c) Inter-terminal Switching Service.
The service performed in handling a car which has been loaded or reshipped within the switching limits on one road for unloading or reshipping within the same switching limits on another road.	The service performed in handling a car which has been loaded or reshipped within the switching limits on one road for unloading or reshipping within the same switching limits on another road *and at a switching charge.*

Switching Reclaim Rules

(Subject to Such Changes as May be Required to Meet Local Conditions)

Previous Form	Amended Form
Rule 1	Rule 1
The carrier road will allow the switching road a reclaim in accordance with Per Diem Rule 5 at the current per diem rate.	No change.
Rule 2	Rule 2
Section 1. No reclaim shall be allowed for an inter-terminal switching movement.	No change.

Previous Form	Amended Form
Section 2. No reclaim shall be allowed to a non-subscriber.	No change.
Rule 3 Rule 1 of this Code will apply to cars which are delivered empty to a switching road for loading, and are returned empty to carrier road by reason of shippers' cancellation of order, or error on the part of carrier road, and to cars which are rejected by shippers account of being unsuitable for specified loading when received from the carrier road.	Rule 3 Rule 1 of this Code will *not* apply to cars which are delivered empty to switching road for loading, and are returned empty to carrier road by reason of shippers' cancellation of order, or error on the part of carrier road, and to cars which are rejected by shippers account of being unsuitable for specified loading when received from the carrier road. (*See Per Diem Rule 14.*)
Rule 4 The right of reclaim is not affected by the fact that in switching service the switching road may collect its charges from the shipper or consignee.	Rule 4 No change.
Rule 5 *The reclaim under Rule 1 of this Code shall be in addition to other reclaims accruing under the Per Diem Rules.*	*Eliminated.*
Rule 6 These rules apply to cars of subscriber roads, including cars owned by the switching roads, except they shall not apply to cars loaded with company material (including company coal) for the use of the switching road.	Rule 5 These rules apply *only* to cars *subject to per diem basis of settlement*, including cars owned by the switching road, except they shall not apply to cars loaded with company material (including company coal) for the use of the switching road.
Rule 7 *These rules shall not apply to cars of private ownership or cars of non-subscribers.*	*Eliminated.*

Previous Form	Amended Form
Rule *8*	Rule *6*
Section 1. *The data necessary to establish the terminal reclaim allowance,* when the average number of days is used as the basis, shall be obtained from the records of the switching road as follows:	Section 1. When the average number of days is used as the basis *for settlement of terminal switching reclaims, the arbitrary to be allowed shall be based on the average time required by the switching road to switch cars for all the roads considered as a whole in the switching district involved. Such arbitrary* shall be obtained from the records of the switching road as follows:
(a) A check covering a representative number of seasonal months shall be made under the direction of the American Railway Association, or otherwise as may be agreed upon between the roads interested.	No change.
(b) The check shall *include* all cars *subject to* terminal switching reclaim *under Per Diem Rule 5*, except cars used in local service, *pick-up cars, diverted cars and* cars loaded with live stock, but not excepting cars loaded with emigrant movables or exhibition live stock, *handled during* the months checked.	(b) The check shall *cover* all cars *included in* terminal switching reclaim *statements for* the months *to be* checked, except—
	(*1*) Cars loaded with live stock, but not excepting cars loaded with emigrant movables or exhibition live stock;
	(*2*) *Trap or Ferry Cars.*
	(*3*) *Cars used in local and inter or intra plant service.*
	(*4*) *Cars on which the required records are incomplete.*
Section 2. In figuring *the* detention *to each car subject to reclaim, including cars owned by the switching road,* the days shall be computed as follows:	Section 2. In figuring detention, the days shall be computed as follows:
(a) *On* cars received loaded and returned empty, cars received empty and returned loaded, cars received loaded and returned loaded and *cars received*	(a) Cars received loaded and returned empty *to the road from which received or delivered empty to another road within the same switching district,*

Previous Form	Amended Form
empty and returned empty per Rule 3 of this Code, count from date received to date returned as evidenced by Interchange Report.	*and* cars received empty and returned loaded *to the road from which received or delivered loaded to another road within the same switching district,* count from date received to date of delivery.
None.	(*b*) Cars received loaded and returned loaded *to the road from which received or delivered loaded to another road within the same switching district, count from date received to date of delivery.*
(*b*) *On cars received loaded from other than the owner, which after being unloaded are delivered empty to owner within the same switching district,* count from date *of receipt* to date of delivery as evidenced by Interchange Reports.	(*c*) Cars picked up from road haul service and placed in terminal switching service, count from date placed for loading, as evidenced by the demurrage records (*using 7 A. M. Demurrage placement date*) to date delivered *to outbound carrier* as evidenced by interchange reports.
	(*d*) *Cars diverted from terminal switching service to road haul service, count from date of receipt as evidenced by the interchange reports to the date released from inbound load as evidenced by the demurrage records.*
(*c*) *On* cars *received loaded which are* reconsigned or reshipped count from date of receipt as evidenced by the Interchange Reports to date reconsigned or reshipped, *for the inbound movement* count from date *reconsigned or reshipped to date delivered to carrier road on outbound movement* as evidenced by the Interchange Report.	(*e*) On cars *handled in terminal switching service and subsequently* reconsigned or reshipped *in road haul service,* count from date *of receipt* as evidenced by interchange reports *to date released as evidenced by demurrage records.*
	(*f*) *On cars received in road haul service and subsequently* reconsigned or reshipped *in terminal switching service, count from date of release as evidenced by demurrage records,* to date delivered *to outbound carrier,* as evidenced by interchange reports.

Previous Form	Amended Form
None.	*(g) Cars owned by the switching road which are loaded in terminal switching service shall be considered pick-up cars and detention computed per paragraph (c).—*
None.	*(h) Cars owned by the switching road which are unloaded in terminal switching service shall be considered diverted cars and detention computed per paragraph (d).*
None.	*(i) Where an intermediate switching road is involved in the terminal switching movement, the receipt from or delivery to the intermediate road shall be considered as receipt from or delivery to the carrier road.*
(*d*) In computing detention in accordance with this rule, the detention of any car beyond eight (8) days shall be eliminated, except if a car is received *from and returned to the same road loaded in both directions* the detention beyond sixteen (16) days shall be eliminated.	*Section 3.* In computing detention in accordance with this rule, the detention of any car beyond eight (8) days shall be eliminated except if a car received *loaded is made empty, reloaded and returned to the road from which received or delivered to another road,* the detention beyond sixteen (16) days shall be eliminated.
(e) Cars on which the required records are incomplete shall be excluded.	*Eliminated.*
Section *3.* The terminal switching reclaim allowance shall be determined by dividing the total detention, computed in accordance with this rule, by the total number of cars included in the check, cars *which are* received *from and returned to the same road loaded in both directions* to be counted as two (2) cars. The quotient to be carried to two (2) decimals, *and remainder beyond the hundredth of a day to be dropped.*	Section *4.* The terminal switching reclaim allowance shall be determined by dividing the total detention, computed in accordance with this rule, by the total number of cars included in the check, cars received loaded, *which are made empty, reloaded and returned to the road from which received, or delivered to another road,* to be counted as two (2) cars. The quotient to *be expressed in* two decimals, *the second decimal to be increased by one (1) when the third (3rd) decimal is five (5) or more.*

Previous Form	Amended Form
Rule 9.	Rule 7
An arbitration Committee may be appointed by interested roads in any local territory. All questions arising under these rules shall be submitted to such committee through its secretary, who shall briefly set forth the points at issue and each party's interpretation of the rule on which the claim is based. Should one of the parties to the dispute refuse to furnish information, such Arbitration Committee shall use its judgment as to whether or not it can properly decide the question at issue, and shall base its decision upon these rules or as modified under agreement between the roads interested and the abstract submitted, and its decision shall govern, except that either party to the dispute may appeal to the Per Diem Rules Arbitration Committee of the American Railway Association.	No change.

[fol. 1070] Ex. 508 Before I. C. C. in Docket No. 17801

Circular No. 2644

American Railway Association

R. H. Aishton, President. W. G. Besler, First Vice-President. Hale Holden, Second Vice-President. Alfred P. Thom, General Counsel. H. J. Forster, Secretary and Treasurer

Office of the Secretary, 30 Vesey Street, New York

March 16, 1927.

To Subscribers to the Car Service and per Diem Agreement:

On the hearing which was held by the Interstate Commerce Commission in Washington, D. C., commencing March 8th, in connection with I. C. C. Docket No. 17801—Car Hire Settlements Between Common Carriers, the Association representatives were requested by the Commission to furnish a statement of the present departures, as between subscribers, from the per diem and reclaim rules of the American Railway Association relating to car hire settlements.

The representatives of the Association were advised that if this information was not voluntarily furnished by the Association's representatives, a questionnaire would be issued by the Commission for the purpose of securing the information direct from all subscriber roads. Under these circumstances, it was felt that it would be much better to handle the matter through the Association, and the representatives of the Association therefore agreed to furnish the information requested.

It will therefore be appreciated if you will furnish promptly the information called for in the following questions:

Per Diem Rule 1

Question 1. Have you any arrangements in effect with other subscriber roads whereby you waive per diem, or allow reclaim of per diem on cars of your ownership while

on the rails of such roads? If so, state in detail the nature of the arrangements, the name of the road or roads with which you have such arrangement and the reasons therefor.

Question 2. Have you any arrangement in effect with other subscriber roads whereby you waive per diem or allow reclaim of per diem on cars of foreign lines' ownership while on the rails of such roads? If so, state in detail the nature of the arrangements, the name of the road or roads with which you have such arrangements, and the reasons therefor.

Per Diem Rule 5

Question 3. Have you any arrangements in effect with other subscriber roads whereby you allow reclaims which have been established on any basis other than provided for by Rule 5? If so, state in detail the nature of the arrangements, the name of the road or roads to which such reclaims are allowed and the reasons therefor.

General

Question 4. The foregoing questions are intended to elicit full information with respect to all departures from the per diem and reclaim rules of the American Railway Association, as between subscribers, and relating to car hire settlements. If there are any departures not called for by these questions, please state in detail the nature of such departures, with what road or roads they are in effect, and the reasons therefor.

It should be understood that these questions do not deal with car hire settlements between subscribers and non-subscribers.

It will be necessary that all subscribers furnish this information by June 15, 1927.

Attached are reply blanks covering the information requested.

The names of the roads to be shown thereon should be written out in full.

Respectfully, H. J. Forster, Secretary.

[fol. 1071] Ex. 509 Before I. C. C. in Docket No. 17801

Summary of Replies to American Railway Association Circular No. 2644

Replies were received from all subscribers to the car-service and per diem agreement.

The following arrangements in connection with switching reclaims were reported. While these arrangements are not in accordance with Rule 5 of the Code of per diem rules, the switching reclaim rules of the American Railway Association are "subject to such changes as may be required to meet local conditions". The rules therefore recognize and authorize such arrangements when agreed to by the roads directly concerned in any switching district.

E. St. Louis Junction Ry. is allowed by all roads at St. Louis an arbitrary terminal switching reclaim of 3.19 days which is in excess of the average detention as shown by check. Excess allowed to cover cost of accounting and per diem records.

Kansas City Terminal Ry. Co. is allowed by all roads at Kansas City an arbitrary reclaim of 4 days on cars handled in terminal switching service, including trap cars and cars loaded with K. C. T. company material. This is in excess of the actual average detention to cars handled in switching service, the excess being intended to reimburse the K. C. T. for cost of keeping records and doing the per diem accounting.

The Sioux City Terminal Co. is allowed by all roads at Sioux City 4½¢ per car in addition to the regular terminal switching reclaim to reimburse it for cost of keeping records and doing per diem accounting.

The St. Joseph Belt and Union Terminal at St. Joseph, Mo. are allowed an arbitrary reclaim of 3 days per car which is in excess of the average detention as shown by check. Excess allowed to cover cost of accounting and per diem records.

The Union Stock Yards Co. is allowed by all roads at Omaha, Nebr. a reclaim of 3.9 days on cars handled in terminal switching service. This includes 20¢ per car for cost of keeping records and doing per diem accounting. Reciprocal reclaim allowance is also made between the U. S. Yards and its connections on cars handled in inter-terminal

switching. Reclaim of actual time maximum 3 days allowed U. S. Yds. on cars containing live stock for quarantine. C., B. & Q. allows U. S. Yards special reclaim on old stock cars cut down for refuse loading equal to days such cars are held in U. S. Yards Co.'s yard.

Under local agreement the roads at Buffalo—(1) allow separate arbitrary reclaim on cars loaded in terminal switching service with ex-lake grain and ex-lake ore. This arbitrary was established by a check of the records and represents average time actually required to switch this traffic which is less than 1½ days per car; (2) allow each other actual per diem plus 2 days on cars delivered in error within the switching district; (3) allow each other a reclaim of 3 days on cars transferred for their account at [fol. 1071-1] Buffalo which is in addition to the bill covering cost of transfer—this agreement is proper under Car Service Rule 14.

Under a local agreement made through the General Managers Association of Chicago and based upon a check of the records all roads allow the B. & O. C. T. and the I. H. B. an arbitrary terminal switching reclaim of 6 days and the Belt Ry. Co. of Chicago is allowed 5.3 days.

The original per diem agreement for the Chicago & North Western Railway was signed on June 27, 1902, with the following exception:

"The Chicago & North Western Railway Company reserves the right to make certain exceptions within its terminal switching district."

The same exception was made to the Per Diem Rules Agreement at the close of Federal control, i. e., March 1, 1920.

This exception applies only to the Chicago terminal switching district and, in effect, permits the Chicago & North Western Railway to issue hold-back orders against connecting lines on shipments destined to points within its Chicago terminal switching district.

The Chicago & North Western Railway state that it serves 564 industries and 39 public team tracks, which are located in a congested district with limited track facilities for consignees which will not permit expansion without enormous capital expenditures and without this exception

on cars held by connections under these hold-back orders, the Chicago & North Western Railway would be subject to the provisions of Per Diem Rule 15, which reads in part as follows:

"A road failing to receive promptly from a connection cars on which it has laid no embargo shall be responsible to the connection for the per diem on cars so held for delivery, including the home cars of such connection" * * *.

Baltimore & Ohio is allowed actual reclaim on empty foreign coal cars received in terminal switching service at Springfield, Ill. for loading at mines in the switching district because unbilled coal is held at the mines and rules do not allow R. R. to move such cars from mine tracks.

The Bellefonte Central Railroad is allowed by Penn. R. R. a reclaim of actual per diem with a maximum of five days per car on cars loaded with prepared limestone and lime rock originating in switching services and destined to points on or via the Pennsylvania. The Bellefonte Central makes a round-trip charge of $6.00 per car, but this charge is not absorbed by the Pennsylvania. The services performed by the Bellefonte Central is in the nature of a switching charge but is carried in a local freight tariff. This arrangement was made on account of the nature of the service performed by the Bellefonte Central.

Chicago, Rock Island & Pacific Ry. allow actual reclaim on cars held by C., B. & Q. at Denver for loading within the switching limits to points via C., R. I. & P. The C., R. I. & P. also allow the C., M. & St. P. a reclaim of actual per diem on Chicago, Rock Island and Pacific automobile cars handled at Fordson Plant, St. Paul, for loading within switching lines to points on or via the Chicago, Rock Island and Pacific.

[fol. 1071-2] Duluth, South Shore & Atlantic is allowed reclaim for actual per diem on empty cars delivered at Superior, Wis. for loading within switching limits at coal dock to points vis Soo Line.

The Lehigh Valley R. R. allow the Williamsport & North Branch R. R. reclaim for full amount of per diem for all cars loaded at Bernice, Pa., mines. This is a switching reclaim arrangement.

Missouri Pacific R. R. waive per diem on all cars while held in possession of Union Pacific at Kanopolis, Kans. to

protect salt loading. Missouri Pacific R. R. waive per diem on all Missouri Pacific system cars while in possession of the Union Railway of Memphis, to eliminate clerical expense and preparation of reclaim statements, since the Union Ry. is owned by the Missouri Pacific. The Missouri Pacific allow the Terminal Railroad Association at St. Louis-Missouri reclaim of actual time on both foreign and Missouri Pacific empty automobile cars held for loading within the switching limits by the Moon Motor Car Company to points on or via the Missouri Pacific. Reclaim is for actual time empty cars are held until applied on orders of the Moon Motor Car Company. To participate in this traffic it is necessary to have supply of cars immediately available for loading, and, therefore, by special arrangement the cars are held in yard of the Terminal Railway which is adjacent to Motor Car Plant.

New York Central and Pittsburgh & Lake Erie jointly own and operate the Lake Erie & Eastern R. R. and allow that road a switching reclaim on basis of proportionate division of the total per diem paid by the L. E. & E. to car owners, including parent lines. This is done in lieu of procedure under the Switching Reclaim Rules whereby reclaims are allowed on basis of arbitrary average detention per car determined annually. Reclaims under arrangement in effect divides the total per diem accruing monthly on the basis of the proportion that the number of cars for each line, including the Lake Erie & Eastern local switching, bears to the total cars switched by that road. This is merely another means of allowing actual per diem which is provided for in the rules.

The Southern Railway is allowed by all roads at New Orleans, La., an actual reclaim on cars held for prospective loading in terminal switch service at the plants of the American Sugar Refinery and the Ford Motor Company. The cars for the Sugar Refinery are held on tracks inside of its plant, and the arrangement is made for the reason that the Refinery cannot anticipate its requirements, especially as to destinations, and equipment for this traffic requires special attention as to its inside condition. The requirements of the Ford Motor Company are for special types of cars with 40 ft. length and 10 ft. height, making it necessary to assemble such cars as they are found and hold them for orders.

Spokane International Ry. is allowed reclaim by O., W. R. & N. for cars held at Millwood, Wn. for paper loading and switching district to points in or via O., W. R. & N., up to time cars are placed for loading. To save this Company extra switching at such time as our yard engines may be occupied with other work.

The Spokane International allow the O., W. R. & N. at Spokane a reclaim of actual time at Spokane on foreign empty cars placed in O., W. R. & N. yard up to the time such cars are applied on orders for return loading. This to avoid switching at times when Spokane International engines are busy.

[fol. 1071-3] Wharton & Northern R. R. is allowed a reclaim of actual per diem by D., L. & W. on all cars handled within switching limits but not on a switching charge.

St. Louis-East St. Louis:—A joint arrangement is now, and has been for years, in effect between the lines at interest and the Terminal Railroad Association of St. Louis, which eliminates the expense of the preparation and checking of Rule 5 switching reclaims between the Terminal R. R. Assn., which is owned by some of the interested proprietary lines in the St. Louis-East St. Louis District, and its connections. This agreed arrangement, which is known as the "Service Measure Plan", provides for the payment of the Terminal R. R. Assn., which is a per diem road, to foreign lines for detention to per diem freight cars while on its rails, and the sum so paid by the Terminal R. R. Assn. each month including a proportion of the Pay Roll expenses of Superintendent of Car Service and Local Freight Agents offices, stationary, postage, etc., is prorated among the interested roads for whom the service is performed, after the elimination therefrom of the per diem on all cars used by the Terminal R. R. Asso. for handling its own business, including its own company's supplies, fuel, etc.

This apportionment, under the plan referred to, is based upon agreed units of time to be charged against each interested road for the handling of its business in switching service by the Terminal R. R. Assn., and the final result is that each month the Terminal R. R. Assn. prepares a statement in detail of the per diem paid on foreign cars showing the apportionment to each interest connection, and the amounts apportioned to each connection are promptly paid

to the Terminal R. R. Assn., thus equalizing them with regard to per diem which they pay to foreign roads on cars which they handle for their connections in switching service, and the labor and expense of preparing and checking voluminous switching reclaims between the Terminal R. R. Assn, and its connections is thus eliminated.

Therefore, it will be seen that the plan of car hire settlement referred to above accomplishes the results intended by Per Diem Rule 5, simply in another form and the arrangement is, and has been for years, mutually agreeable between all of the interested roads and is, therefore, in harmony with the Code of Switching Reclaim Rules, which provides that modifications to the rules may be made at local terminals to meet local requirements.

At Seattle a certain district within the switching limits of that point is divided into zones in order that reciprocal switching arrangements might be effective, owing to the fact that practically all of the railroad- in that territory serve by their own rails practically all the industries causing great congestion and interference in all of them undertaking to switch the plants individually, the reciprocal switching arrangement being intended to, and accomplishing the elimination of this interference, minimizing the switching expense, and because of this arrangement the cars of other carriers are at home at any point within this district, and no per diem is paid or received. In this general arrangement a foreign car delivered by one road is considered the same as if it were a home car of the delivering road.

In the inception of this plan it was not the intention to make an interchange of cars going into the zone territory, but later was adopted in the interest of keeping closer record of the cars that find their way to that section of Seattle and reclaim of actual time with no maximum is allowed by the delivering road.

On cars containing freight, export, coastwise or import, having under lawfully published tariff more than forty-eight (48) hours' free time for loading or unloading, reclaim is allowed the Norfolk & Portsmouth Belt Line R. R. by all roads at Norfolk, Va. for actual per diem, computed [fol. 1071-4] from date of delivery to and including date of

release, plus one day for return of empty car in the even- car is not returned the same day released. If car is placed for reloading, the date of first release governs. Any storage charges collected by the Belt Line on such cars are paid to the delivering carrier.

At Seattle and Tacoma reclaim of actual time is allowed switching lines on cars switched to piers with export shipments, and an allowance of five (5) days arbitrary reclaim on cars delivered switching lines at Seattle consigned to points on Puget Sound via Barge Lines.

The Alton & Southern R. R. is allowed at E. St. Louis by all roads 0.86 days reclaim on cars handled in intermediate switching. Arbitrary was arrived at by check of the records and represents average number days actually required.

Denver & Rio Grande Western is allowed by the A. T. & S. F. reclaim of actual time on coal cars delivered D. & R. G. W. empty for return loading from Chandler Junction, Colo. for intermediate switching to mines located on the Colorado-Southeastern, because the loading road is a non-subscriber.

The C. M. & St. P. allow the Northern Pacific a reclaim on cars delivered the latter company for return loading from points on the Newaukum Valley Railway because the loading road (N. V.) is a non-subscriber. The Northern Pacific handle these cars in intermediate switch service for storage on the Newaukum Valley.

The East St. Louis & Suburban Railway waives per diem on cars of the East St. Louis & Surburban Railway while on the rails of the St. Louis & O'Fallon Railway, not to exceed one day on each movement between O'Fallon Junction, Ill., and East St. Louis, Ill., on traffic received from and delivered to the East St. Louis & Suburban Ry. at O'Fallon Junction, Ill., as to which the St. Louis & O'Fallon Railway acts as intermediate carrier between the two points named.

Under a local agreement all roads at New Orleans, La. allow the New Orleans Public Belt 1 day reclaim on cars handled in intermediate switching.

The Toledo Angola & Western gets refunds of intermediate reclaims paid by it to the Toledo Terminal on outbound shipments via roads other than direct connections of

the T. A. & W. in order to place those roads on same basis as the direct connections of the T. A. & W.

Under a local agreement made through the General Managers Association of Chicago all roads allow the B. & O. C. T.—Belt Ry.—C. J. Ry.—C. R. & I. Ry. & I. H. B. 1 day reclaim on cars handled in intermediate switching. This arbitrary to be made until a different figure is established by a check of the records.

Under local agreements the following roads are allowed reclaim on so-called trap or ferry cars:

	By	At	Amount
Akron & Barberton Belt R. R.	All roads	Akron, O.	2.11 days
Baltimore & Ohio Chicago Terminal R. R.	" "	Chicago	2½ "
Belt Ry. of Chicago	" "	"	2½ "
Cedar Rapids & Iowa City Ry.	" "	Cedar Rapids	1 day
Chicago & Illinois Western R. R.	" "	Chicago	2½ days

[fol. 1071–5]

Chicago & Western Indiana R. R.	All roads	Chicago	2½ days
Chicago Junction Ry.	" "	"	2½ "
Chicago River & Indiana R. R.	" "	"	2½ "
Chicago, West Pullman & Southern R. R.	" "	"	2½ "
Des Moines Union Ry.	" "	Des Moines	4 "
East Erie Commercial R. R.	" "	Erie, Pa.	2.74 "
Indiana Harbor Belt R. R.	" "	Chicago	2½ "
Indianapolis Union	" "	Indianapolis	2.98 "
Kansas City Terminal Ry.	" "	Kansas City	4 "
LaSalle & Bureau County R. R.	" "	LaSalle, Ill.	3 "
Manufacturers Ry.	" "	St. Louis	2½ "
New Orleans Public Belt	L. & N.	New Orleans	Term. Arb.
St. Joseph Belt Ry.	All roads	St. Joseph, Mo.	3 days
St. Louis Southwestern Ry.	C. R. I. & G. and F. W. & D. C.	Dallas, Texas	Actual time
Union Terminal Ry.	C. B. & Q.	St. Joseph, Mo.	3.07 days
Union Stock Yards	All roads	Omaha	3.90 "

NOTE.—Rule 5 of the Code of Per Diem Rules has been amended to provide effective Jan. 1, 1928 for reclaim of actual time maximum 3 days on Trap or Ferry cars.

Tonopah and Goldfield Railroad has an arrangement with Bullfrog Goldfield Railroad Company which provides that no reclaims will be made for switching in either direction. Switching charges are purposely made high.

Under local agreements the following roads are allowed reclaim on empty stock cars held at Stock Yards within switching limits for cleaning, disinfecting and prospective loading:

	By	At	Reclaim
Chicago & Alton	N. Y. C. & St. L.	Springfield, Ill.	Actual Time
Chgo. Burl. & Quincy	D. & R. G. W.	Denver, Colo.	" "
East St. Louis Jct. Ry.	All roads	East St. Louis, Ill.	Actual Time with max. 5 days
Erie	D. L. & W.	Buffalo, N. Y.	Actual Time
Ft. Worth Belt	Sou. Pac.	Ft. Worth, Tex.	" "
[fol. 1071-6]			
*Kansas City Southern	C. & A.	Kansas City	Actual Time
Missouri-Kansas-Texas	A. T. & S. F.	Oklahoma City, Okla.	" "
" "	C. R. I. & P.	" "	" "
Missouri Pacific	C. St. P. M. & O.	So. Omaha, Nebr.	Actual time Max. 10 days
Nashville, Chattanooga & St. Louis	L. & N.	Atlanta, Ga.	3 days
New York, Chicago & St. Louis	C. & O.	Muncie, Ind.	Actual Time
St. Joseph Belt	A. T. & S. F.	St. Joseph, Mo.	" "
" "	C. B. & Q.	"	" "
" "	Mo. Pac.	"	" "
Southern Pacific (T. & N. O.)	M-K-T	Houston, Tex.	" "
Union Pacific	Sou. Pac.	No. Portland Ave.	Actual with Max. total of 150 days for any one month
*Union Pacific	C. & A.	Kansas City	Actual Time
*Union Pacific	C. & N. W.	Valley Nebr.	" "

* Temporary arrangement advice received since original report that it is no longer in effect.

It is stated by the roads participating in this arrangement that the holding of this class of cars under the conditions recited above is an economic measure since it saves switching expense, empty mileage and the cross hauling of equipment; the arrangement provides no preference or advantage to any individual line by which exemption of per diem is made but in the main establishes an operating economy.

[fol. 1071-7] Per Diem Arrangements Incident to Joint Operating Contracts

Atchison Topeka & Santa Fe allow Yosemite Valley a reclaim of 2 days on merchandise cars under a joint facility arrangement. Cars are interchanged for record purposes only.

Baltimore & Ohio cars are delivered to the B. & O. C. T. for prospective loading and reclaim allowance made by B. & O. for the time that cars are held for loading. B. & O. allow B. & O. C. T., on cars handled at Forest Hill freight house, containing l. c. l. freight, ¾ day per car and one (1) day on carload shipments. These are System Lines arrangements.

Baltimore & Ohio Railroad allow Pennsylvania Railroad special reclaim for full detention on cars in B. & O. joint operation on Coal Lick Run Branch or Pennsylvania R. R. interchanged at Uniontown, Pa. Joint operation to simplify per diem accounting, the cars are interchanged to the P. R. R. and also interchanged when returned, P. R. R. paying the owners per diem while cars are on their line and presenting a reclaim to the B. & O. for amounts paid.

B. & O., Penn. and P. & L. E. allow, which roads own it, Monongahela Ry. a reclaim on cars delivered Monongahela Ry. in excess of their daily orders only during the period of good car supply. Orders are received daily from Monongahela Ry. for definite number of empty cars. Effort is made to make delivery of empties accordingly but at times it happens that additional cars are delivered, causing an overflow, and to prevent additional switching, Monongahela accepts the excess empties and receives a reclaim for the per diem from time placed on interchange track until orders are received for movement to the point of loading.

Chesapeake & Ohio Railway allow a reclaim to the Hocking Valley for per diem on C. & O. cars delivered for C. & O.

power at Parsons, which is a joint terminal under jurisdiction of H. V.

Chicago, Milwaukee & St. Paul Ry. allow Union Pacific R. R. reclaim of actual per diem on all cars of merchandise handled at U. P.—Omaha freight house account joint facility arrangement with C. M. & St. P. Cars considered as in possession C. M. & St. P.—this also applies to empty cars held on designated U. P. storage tracks to protect freight house loading.

C. M. & St. P. allow Soo Line reclaim of actual per diem, maximum three (3) days, on all cars handled between Menasha, Oshkosh and Fond du Lac, under a car haul arrangement plan, covered by contract, and in order to avoid circuitous haul.

C. M. & St. P. has joint track operation in connection with C. & N. W. at Appleton, Wis., and allows C. & N. W. reclaim of actual per diem on cars handled in switching service, the interchange being made merely for record purposes.

C. M. & St. P. allows C. B. & Q. actual reclaim on cars handled by C. B. & Q. at Onalaska, Wis., in switching service for account of the C. M. & St. P. This service performed by C. B. & Q. for reason that C. M. & St. P. tracks between Grand Crossing and Onalaska, crossing C. B. & Q. main line track having been removed under agreement to save C. B. & Q. putting in interlocking crossing, to expedite movement of trains and lessen danger. Cars are considered in C. M. & St. P. Ry.'s possession and interchange made merely for record purposes.

Delaware, Lackawanna & Western R. R. allows New York Central reclaim of actual per diem on all cars from and to industries on Tonowanda industrial siding and which are interchanged at Black Rock. D. L. & W. participates in the service of the industries and the arrangement is covered by joint contract.

[fol. 1071-8] Indianapolis Union Ry.—under the terms of the joint operating agreement of September 20, 1883, between the Indianapolis Union and each of its connections, certain through business moving over the Indianapolis Union Belt Line from one junction point or connection to another is interchanged direct from the delivering road to the receiving road, and such cars do not enter the per diem

records of the Indianapolis Union Ry. They generally move over that company's tracks within the calendar day, and, therefore, no per diem would accrue on such cars. A similar arrangement is in effect under the operating agreement in reference to cars of livestock moving over the Indianapolis Union tracks—Belt Line from connections to the Indianapolis Stock Yard and return. These stock yards located on the Belt tracks are treated as a joint yard for the use of all the lines entering Indianapolis and the cars, which generally move to and from the Stock Yards very quickly are carried in the records of the delivering line for car hire settlement. All other cars are handled under the A. R. A. per diem and reclaim rules. The Indianapolis Union R. R. is a terminal and switching road which is not operated for profit, but solely for interests of its connecting lines at cost.

The B. & O. C. T. R. R. handled cars under contract for use at Halsted Street and Forest Park. These cars are interchanged to the B. & O. C. T., but on account of being handled under contract, instead of switching charge, the Minneapolis, St. Paul and Sault Ste. Marie allow a special reclaim for full per diem while in possession of the B. & O. C. T. To reimburse the B. & O. C. T. for per diem which they pay on the cars on account of being handled under contract instead of a switching charge. By reason of an agreed car haul charge to the C. M. & St. P. Ry. on traffic delivered to or received from the Minneapolis, St. Paul & Sault Ste. Marie at Portage, Wis., originating at or destined to stations on C. & N. W. or I. C. Railways, cars are handled between Portage and Madison by the C. M. & St. P. at rate of $8.10 per car, the Soo Line pay actual per diem reclaim with a maximum of three days.

This arrangement made to handle cars via a short route.

Missouri Pacific allows Illinois Central reclaim allowance of actual time on all cars handled to and from the Mississippi-Warrior River Service at Cairo, Ill. where Missouri Pacific handles such cars in road haul movement at a contract rate rather than on a division of the through rate. Detention is normally less than the arbitrary reclaim on switch cars and the I. C. agree to accept this basis since the contract rate is less than on a division basis, and under

a ruling of the Interstate Commerce Commission, per diem cannot be collected from the barge lines.

New York Central Lines waive per diem as between New York Central Lines' railroads on stored and bad order N. Y. C. Lines equipment, when held in storage or for repairs on other than the owning lines, in order to accomplish greater efficiency and economy in operation and avoid unnecessary cross-haul of cars and excessive empty mileage.

Northern Pacific Ry. allow actual time reclaim on system cars stored and held for prospective loading on the S. P. & S., which is a subsidiary line. This is done to save empty mileage; allow actual time on all cars handled by the S. P. & S. for account of Northern Pacific between Vancouver and Portland, account of an operating contract with the S. P. & S. which is a subsidiary line of the N. P. Northern Pacific also allow S. P. & S. Ry. actual time on N. P. System Cars loaded with company coal for N. P. trains operating over S. P. & S. rails under contract.

St. Louis & Belleville Electric Ry. allow Illinois Central maximum of 5 days on cars delivered to Illinois Central for return loading at Dowell Mine (DuQuoin, Ill.). In return, I. C. accepts St. L. & B. E. cars and their own at a [fol. 1071-9] junction 10 miles distant, thus relieving St. L. & B. E. of a 10-mile empty haul over 2½% grade.

Seaboard Air Line Ry. allow Durham and Southern two (2) days on loaded cars and one (1) day on returned empty cars handled by D. & S. from Durham to Apex for redelivery to the S. A. L. at latter point, because cars short routed over D. & S., instead of S. A. L. account of track and bridge limitations on S. A. L.-Durham Branch; also 100 miles vs. 21 miles via D. & S. Cars handled on special transportation charge.

Southern Pacific Texas-Louisiana Lines settlement for car hire by the associated lines of the Southern Pacific System is made on the basis of mileage instead of per diem. The cars of all of these lines (except the Pacific Electric) are pooled for convenience and economy in operation. Under this plan a mileage rate based on the cost of car ownership is more convenient than the per diem rate between lines party to the arrangement.

Southern Pacific Co. allow Sacramento Northern and Western Pacific per diem on cars handled in bridge move-

ments between Chico, Cal., and Weso, Nevada, because loaded cars short routed under contract at a fixed rate per car and under terms of contract, Southern Pacific absorb per diem while on Western Pacific and Sacramento Northern rails, with a maximum of four (4) days on any one car.

Union Pacific R. R. allow Illinois Central and C. M. & St. P. reclaim actual per diem maximum of one (1) day, on all U. P. cars delivered Council Bluffs in bad order and set back to delivering road for repairs. This is a reciprocal arrangement and is made because inspection is made by receiving road and on account of yard conditions, receiving road must pull cars from interchange track into their own yard before they can switch out bad order cars, and often it is not possible to return such cars prior to midnight.

Allow C. R. I. & P. actual reclaim on cars weighed for St. J. & G. I. at Fairbury, about 2 or 3 cars per year, because St. J. & G. I. have no scales at Fairbury and as C. R. I. & P. handle cars for the cost of weighing, reclaim is allowed to relieve them of per diem expense.

Allow M. P. a reclaim of two (2) days on empty U. P. stock cars returned Kansas City to Leavenworth, because stock shipments from U. P. Leavenworth Branch points to Kansas City are short routed via Leavenworth over the M. P. to Kansas City on a car rate, and the U. P. allows the M. P. a two (2) day reclaim covering the return of the empty in equalization to Leavenworth.

Virginian Ry. Co. on coal cars delivered C. & O. at Pemberton for return coal loading at joint mines, Virginian waives all per diem, because it has trackage rights to joint mines, receives all revenue and pays C. & O. switching charge.

On Virginian cars, other than coal cars, C. & O. pays per diem-reclaims on Virginian for full per diem because Virginian receives line haul revenue to final destination and pays C. & O. switching charge on movement from Pemberton to destination.

On coal cars delivered C. & O. at Carlisle empty for return coal loading from joint mines on C. & O., Virginian waives all per diem while cars are on C. & O., because it has trackage rights to joint mines, receives all revenue and pays C. & O. switching charge.

Washington & Vandemere R. R. cars of this company are at home on the Atlantic Coast Line and are treated as A. C. L. equipment when not in active service. Per diem is allowed by the Atlantic Coast Line to the W. & V. for the time that the cars are in service on the A. C. L., and the W. V. collects per diem on its equipment while on foreign roads. System lines arrangement.

[fol. 1071-10] Special Arrangements in Effect Providing for exemption of per Diem on Cars Held or Used for the Protection of the Owner's Railroad Material, Supplies and Fuel

Atchison, Topeka & Santa Fe Railway allow C. B. & Q. a special reclaim on A. T. & S. F. empty coal cars delivered C. B. & Q. at Galesburg for loading A. T. & S. F. company coal at mines in Central Illinois; allow the Missouri Pacific reclaim covering actual per diem on empties delivered Missouri Pacific in switching service at Eldorado, Kansas, for return loading with A. T. & S. F. company ballast (See Note e); Allow St. L.-S. F. reclaim covering actual time on A. T. & S. F. empty tank cars delivered St. L.-S. F. in switching service at Tulsa for loading company fuel oil; Allow St. L.-S. F. actual time reclaim on A. T. & S. F. cars delivered St. L.-S. F. in switch service at Arkansas City Kansas, for loading A. T. & S. F. company sand; Allow the Wichita Northwestern Ry. actual reclaim for per diem on A. T. & S. F. empty cars delivered in switch service at Larned, Kansas, for A. T. & S. F. company sand loading.

Atlanta, Birmingham & Coast Railroad allow St. L.- S. F. a reclaim of per diem earned in excess of five (5) days on any car in any one move, when delivered empty and returned loaded with company fuel, provided the car has not been diverted to other service. The loads are delivered to the St. L.-S. F. as they arrive at junction and are held on their rails in close proximity to the mines at which loaded (See Note e).

Chicago & Eastern Illinois Railway, one of the owners of the Chicago and Western Indiana Railroad, on C. & W. I. company coal, assumes the per diem while cars are on the C. & W. I. rails. These cars are handled by the Chicago & Western Indiana Switching Association, which is operated

for the joint account of the Chicago & Western Indiana and its owner lines, the Chicago & Western Indiana Switching Association acting as Agent for the Chicago & Eastern Illinois Railway, have a reciprocal arrangement, to avoid accounting expense, with the Chicago & Western Indiana Railroad, of which it is a part owner, whereby both lines mutually agree to waive per diem on cars used for loading concrete, stone, stone ballast, for use on the C. & W. I. R. R. For this loading, which is on C. & E. I. rails, the C. & E. I. furnishes cars for concrete stone and the C. & W. I. furnishes the cars for the ballast stone. Each company waives per diem on its cars while on the rails of the other company.

Chicago, Burlington & Quincy Railroad allow reclaims to the Mississippi River & Bonne Terre, Missouri Pacific, Missouri & Illinois, and St. Louis-San Francisco of actual per diem accruing on C. B. & Q. cars which are delivered empty for loading with chat or cinders (ballast) for C. B. & Q. company use, when such cars are used for that purpose.

Chicago & North Western Railway & Chicago, St. Paul, Minneapolis & Omaha waives per diem on its cars delivered empty to foreign lines for handling C. & N. W. company material from date of delivery to date placed for loading, when requested to do so by the loading line.

Chicago, Rock Island & Pacific Railway allow the C. & S. one day reclaim on C. R. I. & P. cars delivered C. & S. at Denver instead of Colorado Springs for C. R. I. & P. company fuel because it saves a haul from Denver to Colorado Springs. C. R. I. & P. also allow Texas & Pacific reclaim on C. R. I. & P. cars delivered to the T. & P. for company material.

Chicago, St. Paul, Minneapolis & Omaha Railway allow reclaim on their cars for company ice loading in intra-terminal switch service during the time ice house is being filled at Omaha, in order to avoid paying per diem on Union Pacific cars.

[fol. 1071-11] Great Northern R. R. allow Can. Natl., C. B. & Q., D. & I. R., D. W. & P., E. J. & E., Soo Line and Nor. Pac., reclaim for actual per diem on G. N. cars furnished those roads for loading G. N. company materials.

Kansas City Southern Railway has an interest in a coal mining property at Calhoun, Okla., which has been shut down, and temporarily slag coal has been purchased a few

miles out of Howell, Okla., on the C. R. I. & P. The K. C. S. waives per diem on its own cars that are delivered to the C. R. I. & P. at Howell, to be loaded at this mine and returned with company coal. Waive per diem on its own tank cars delivered to Midland Valley R. R. for return loading with K. C. S. fuel oil purchased from The Texas Co. at West Tulsa, Okla. when cars are on rails of Midland Valley beyond four (4) days on individual trip, because at times the empty cars are delivered in excess of loading requirement of shipper and at convenience of the K. C. S., who desire to have company fuel in their own cars to avoid unnecessary expense. Do not charge per diem against T. & P. Ry. on K. C. S. owned tank cars delivered T. & P. at Shreveport for loading company fuel oil within switching limits. The Fort Smith & Western Railway Company have in a few instances called upon Kansas City Southern to accept their system equipment for loading Company ties at stations on Kansas City Southern Railway, Fort Smith & Western Railway waiving per diem to avoid payment of per diem on foreign owned equipment carrying their Company ties while on their rails since the ties would be in many instances carried for some considerable period before being loaded.

Kansas City, Mexico & Orient Railway allow St. L.-S. F. reclaim on K. C. M. & O. coal cars placed at mines on St. L.-S. F. for loading company coal in case mines are closed due to weather conditions, machinery failures, strikes, or other conditions beyond the control of the carrier.

Long Island cars are used for loading Long Island Company fuel at mines located on the Pennsylvania. If there is a failure on the part of the mines to load these cars promptly after arrival at the mines, a reclaim is allowed the Pennsylvania for the excess number of days the empty cars are held.

Lehigh Valley cars are used for loading Lehigh Valley Company fuel at mines located on both the Pennsylvania Railroad and the Monongahela Railroad. If there is a failure on the part of the mines to load these cars promptly after arrival at the mines, a reclaim is allowed the holding road for the excess number of days the empty cars are held.

Missouri-Kansas-Texas Lines allow the Denison, Bonham & New Orleans Railroad to hold a few of their empty

coal cars for sand and gravel loading for company use, and allow reclaim for the time the cars are held awaiting loading because facilities for storing empties at interchange point are limited and the cars can be held to best advantage at the sand and gravel pits.

Northern Pacific Ry. allow the Duluth & Iron Range, Duluth, Winnipeg & Pacific, and M. St. P. & S. S. M. reclaim of per diem at actual time on N. P. cars delivered these lines for loading company ties, in order that the cars may be held at convenience of the Northern Pacific in unloading.

The Oklahoma City-A. D. A.-Atoka Railway operate under lease 14 miles of M.-K.-T. track upon which are located mines furnishing M.-K.-& T. Co. fuel. This fuel is handled by the O. C.-A.-A. at published tariff rates. Empty cars are stored for this loading and the M. K. & T. allow a reclaim of actual per diem in excess of an arbitrary allowance of three days for loading.

[fol. 1071-12] St. Louis-San Francisco Railway waive per diem on St. L.-S. F. tank cars used in handling company creosote service while held empty from date of arrival at loading point (New Orleans, La.) on the Southern Railway until date loaded (See Note e).

Seaboard Air Line Railway allow the Birmingham Belt actual reclaim on S. A. L. cars held for loading company coal when cars are delayed awaiting loading more than five (5) days. The coal mines are located on the Birmingham Belt.

Southern Pacific-Texas-Louisiana Lines in order to minimize expense of unloading, furnish their own flat cars for company rail loading to St. L.-S. F., L. & N., Southern, I. C. When date of loading is postponed, cars are held in the loading territory and per diem is waived from date of arrival to two (2) days prior to date placed for loading.

Southern Railway System—Oil burning roads at New Orleans secure cinders for ballasting purposes from the American Sugar Refinery, and cars are held for this purpose at the Refinery plant. The roads for which this service is performed allow the Southern Railway a reclaim of actual per diem while cars are held for this purpose.

Toledo—Terminal Railroad allow the Toledo, Angola & Western Railway to reclaim per diem paid on all cars when loaded with stone or company ballast.

Ulster & Delaware Railroad waive per diem on U. & D. cars furnished Western Allegheny Railroad for loading company coal when held beyond two (2) days, but should the Western Allegheny delay such cars, it is responsible for the per diem. This arrangement enables the Ulster & Delaware to receive 50% of its fuel coal at Kingston, N. Y., thereby saving a non-revenue haul of 104 miles.

Wabash Railway furnish their hopper cars to the Michigan Central free of per diem when such cars are used for loading gravel for company use as ballast on the Wabash. (See Note e).

NOTE e.—Temporary arrangement originally reported, but subsequent advices state that it has been cancelled.

It is stated by the Roads reporting these arrangements that they provide an economy to the car owner in that at times it is impossible and uneconomical to promptly unload the material upon arrival on car owner's rails, and if such loading is protected with equipment other than that of car owner, it will result in a material per diem expense to such car owner, while at the same time, to a great exfent, it may be assumed that equipment of said car owner will be idle. Furthermore, it is stated that the application of cars of the railroad for whom the material is loaded provides equipment most economically suitable for handling that particular commodity at destination. In other instances it is stated that per diem relief is afforded mainly for the purpose of avoiding accounting expense. This, however, applies mainly between subsidiary and proprietary lines Again, similar arrangements are made to influence the handling of such material via the short haul route, resulting in some savings in operating expense on the part of the material owner. Other instances indicate the application of the arrangement for the purpose of eliminating or reducing the per diem expense to the loading road because of excess delivery of empties to the loading road.

[fol. 1071-13]

Special Arrangements Providing for Exemption of Per Diem on Automobile Box Cars Held for Prospective Loading

Name of Road	Held by	At
Atchison, Topeka & Santa Fe Ry.	C. & E. I. and L. & N.	Evansville, Ind. Various
	M. & St. L. and T. P. & W.	Peoria, Ill.
	Wabash	St. Louis, Mo.
Chicago, Rock Island & Pacific Ry.	C. & E. I.	Evansville, Ind.
	T. P. & W.	Peoria, Ill.
Denver & Rio Grande Western R. R.	C. & A. R. R.	Chicago, Ill.
	C. & N. W. Ry.	Milwaukee, Wis.
	Mo. Pac.	Kansas City, Mo.
Great Northern Ry.	C. & N. W., C. & E. I., C. B. & Q., C. G. W., G. T., West	Various points in loading territory.
Missouri-Kansas-Texas Lines	C. & E. I., C. M. & St. P., C. & A., G. T. W., P. M.	Various points in loading territory.
Missouri Pacific R. R.	C. & A.-C. & E. I.-G. T. W.-L. & N.-N. Y. C. & St. L.-P. M.-Wab	Various
Northern Pacific Ry.	C. G. W.-C. B. & Q.-C. & N. W.-C. R. I. & P.	Chicago, Ill.
St. Louis-San Francisco Ry.	C. & E. I.-C. & A.	Various
Southern Pacific System	C. & A.-C. & E. I.-C. & N. W.-C. M. & St. P.-C. G. W.-C. R. I. & P.-G. T. W.-I. C.-K. C. S.-M. K. T.-M. P.-St. L.-S. F.-St. L. S. W.-Wab	Various
Texas & Pacific Ry.	C. M. & St. P.-P. M.-C. & E. I.-C. & A. Sou.-L. & N.-M. P.	Various
Union Pacific System	C. & A.-C. & N. W.-C. G. W.-C. M. & St. P.-I. C.-Wab	Chicago & St. Louis
Wabash Ry.	T. P. & W.	Peoria
Western Pacific R. R.	C. & A.-C. & E. I.-M. P.-D. & R. G. W.	Various

(The Roads Participating in this Arrangement state—With the development in the automobile industry, arrangements have been made by railroads operating west of the Mississippi River providing for the exemption of per diem on automobile box cars held generally at western junctions with eastern carriers from which a supply of such cars could be made immediately available for application upon special orders of railroads (mainly those locating east of Chicago) upon which automobile industries are located. The principle of this arrangement establishes no preference to any railroad or producer but permits the car owning carrier to participate in the furnishing of the special types of equipment particularly adapted to and required by automobile traffic routing via car owners rails. Furthermore (a) it minimizes the number of units necessary [fol. 1071-14] for the railroads as a whole to provide to meet requirements of this traffic. (b) It is economical in that it eliminates empty car mileage and general operating expense resulting therefrom which may be caused by the arbitrary return of such cars to owning carriers rails in order to avoid the assumption of per diem expense by the holding road. (c) It permits the prompt application upon car orders of types of cars not generally owned by the originating carriers.

[fol. 1071-15] Miscellaneous Arrangements

Atchison, Topeka & Santa Fe Ry. allow D. & R. G. W. arbitrary 3-day reclaim for handling empties from A. T. & S. F. at Jansen for coke loading at Cokedale.

Cambria and Indiana Railroad has an arrangement with the New York Central covering the storage of surplus coal cars whereby the seasonal surplus of such cars in excess of this Company's storage capacity is held on the New York Central Railroad and the regular per diem collected on cars so held is subsequently reclaimed by the New York Central at the regular per diem rate. This practice is in accordance with an agreement entered into December 30, 1910 by which this Company has supplied its proportion of the maximum equipment required for the prompt and efficient movement of coal to destination, and in consideration thereof, the New York Central agreed to hold on its own tracks any surplus from time to time existing in excess of this Company's storage capacity.

Cambria & Indiana R. R. since April 15, 1927, has agreed temporarily to allow reclaim to Reading Co. on C. & I. cars loaded with company fuel for the Reading, after such cars have reached destination; this arrangement to continue only while the Reading is accumulating a storage supply of fuel for its own needs and during the time the C. & I. has a surplus of its own coal cars.

East Jersey R. R. & Terminal Co.—A number of tank cars belonging to this company are in the service of the Tidewater Oil Company, and there is an arrangement with the Central Vermont Ry. whereby the East Jersey R. R. & Terminal Co. waive per diem while the empty tank cars are held in the yards of that carrier at Scotch Cap and New London, Conn., awaiting orders from the Tidewater Oil Company for placement.

The Beaver Dam Railroad operate under lease a number of cars owned by the Smethport Extract Company, Inc., which has a plant located on the Gainesville & Northwestern Railroad at Helen, Georgia. These cars are considered at home when on the tracks of the Smethport Extract Company, and, therefore, do not earn per diem while held on those tracks.

Lake Erie, Franklin & Clarion R. R. allow N. Y. C. & Penna., full per diem on L. E. F. & C. cars while undergoing repairs at New York Central and Penna. shops account inadequate facilities at their own shops.

Chicago, Rock Island & Pacific Ry. allow Charles City Western reclaim of actual per diem, maximum 3 days per car; K. O. M. & O. reclaim actual time on C. R. I. & P. cars held for loading during grain season; Tremont & Gulf actual reclaim on C. R. I. & P. cars.

Chicago & North Western Ry. allow Chicago & Illinois Midland Ry. 3 days reclaim on C. & N. W. cars delivered at Barr for loading with coal at mines at Andrew, Ill. Arrangement in effect since January 20, 1915, at which time that portion of C. & I. M. from Barr to Andrew Mine was C. P. & St. L. Distance is so short that revenue derived by C. P. & St. L. did not warrant it paying per diem on C. & N. W. cars.

Denver & Rio Grande Western Ry. allow Utah Idaho Central R. R. reclaim on D. & R. G. W. box cars held empty to protect return sugar loading via D. & R. G. W.

[fol. 1071-16] Minneapolis, St. Paul & Sault Ste. Marie al-

low D. & N. E. special reclaim for actual per diem from date cars arrive Cloquet empty until placed for loading via Soo Line, in order to meet competition of N. P., C. M. & St. P., G. N., who have direct connections with D. & N. E. and can furnish cars on short notice, while Soo equipment must be forwarded from Superior via intermediate line and held on D. & N. E. for prospective loading.

Duluth, South Shore & Atlantic allow D. & N. E. reclaim for actual per diem on D. S. S. & A. cars which are delivered empty for return loading via D. S. S. & A., in order to compete with other roads delivering empty cars under similar arrangement.

Great Northern Ry. allow Minneapolis, Red Lake & Manitoba Ry. reclaim of actual per diem with maximum of 3½ days on each car held, to protect loading via G. N., for convenience of G. N. Ry.

G. N. allow Inland Empire reclaim of actual time on cars held, to protect loading via G. N., for both companies' convenience.

Union Pacific waive per diem on U. P. cars held by Spokane, Coeur d'Alene and Palouse Ry. for prospective loading, because: (a) Equipment service in that general territory is more or less infrequent; (b) Equipment supplied for non-competitive as well as competitive business; (c) If cars were not actually held on this road for return loading, the same number of cars, or a larger number, would have to be held on U. P. rails awaiting order, where they would not be earning revenue or per diem for the U. P., and by holding them the patron is served more promptly, without disadvantage to other shippers; (d) The practice is of long standing.

Lake Superior & Ishpeming R. R. waive per diem on L. S. & I. cars in ore service between Republic and Ishpeming, Mich., while on C. & N. W. rails. This is a reciprocal agreement; waive per diem on L. S. & I. cars while on Manistique & Lake Superior R. R. Reciprocal agreement.

Long Island R. R. is allowed 4.7 days per car reclaim on each car handled in Greater New York Territory. This allowance was fixed as an equalizing medium by unanimous action through the General Managers Association of New York in 1907. On account of the nature of the service performed by the Long Island R. R., it requested relief from per diem charges on cars handled in the Greater New York District, and the General Managers Association appointed Mr.

W. A. Garrett as arbitrator to make an investigation and recommendation covering the request of the Long Island R. R. The arbitrator's decision was approved.

Minneapolis, St. Paul & Sault Ste. Marie allows Midland Continental actual reclaim, maximum 4 days, on Soo Cars loaded in one direction, and actual reclaim, with maximum 5 days, on Soo cars loaded in both directions. This arrangement was made to avoid cross-hauling of empties and to meet competition of Northern Pacific and C. M. & St. P. who can furnish cars as wanted at Jamestown and Edgely at reduced per diem cost and expense in hauling for Midland Continental.

[fol. 1071-17] Northern Pacific allow Minnesota, Dakota & Western Ry. reclaim of 3 days on all loaded cars interchanged, which special arrangement was made in connection with division of rates with that line. Canadian National Rys. make the same allowance due to competitors doing the same.

Minnesota Western R. R. is allowed actual reclaim, with maximum of 5 days, by C. G. W., C. R. I. & P., C. St. P. M. & O., and G. N.; actual-maximum 12 days, by M. & St. L.; actual time by Soo Line and N. P., actual-maximum 8 days, by C. B. & Q. Reasons for these allowances are stated as follows: C. B. & Q.: For traffic reasons, similar arrangements having been made with its other connections. C. R. I. & P.: To meet competition. C. St. P. M. & O.: Found that several other lines had made similar arrangement; therefore, necessary for us to do likewise, from a competitive standpoint. C. G. W.: In order to place C. G. W. on a parity with competitors, who, we understand, have similar arrangements. G. N.: Company's convenience. Soo Line: In order to have our equipment held at various points on Minnesota Western for loading via Soo Line, and with view to avoiding delay in furnishing cars, save switching charges and avoid cross-hauling of empties by G. N., who act as intermediate switching line between N. W. and Soo Line. M. & St. L.: In lieu of the acceptance of M. W. R. R. empty equipment. N. P.: Protect our business to and from the line account of competitive lines having similar arrangements.

Missouri-Kansas-Texas R. R. allow Texas Short Line to hold from 3 to 5 cars at salt mines and reclaim for per diem,

maximum 3 days, so that empties can be furnished salt mines on short notice.

Missouri Pacific R. R. allow Missouri-Illinois R. R. reclaim on M. P. coal cars, not to exceed 250 cars, while under load with "no bill" coal account miners' strike. Temporary arrangement.

Boston & Maine waive per diem on cars held for prospective loading delivered Montpelier & Wells River R. R. in anticipation of orders and for B. & M. company material. B. & M. controls the M. & W. R. through stock ownership, and up to January 1, 1926, they had the same general officers. Prior to that date, it had been the practice of the B. & M. to store cars on M. & W. R. for prospective loading. Since that date the same arrangements were continued because of the fact that the junction point where these cars are to be held for delivery is not large enough to permit of holding the cars in anticipation of prospective orders. For that reason, it was necessary to deliver them and have them held on storage track approximately at the point of shipment or near thereto, on the M. & W. R. While so stored and held on the storage tracks, a report is made by the M. & W. R. daily to the B. & M. of the initials and numbers of such cars, and they are held free of per diem for the time so stored on storage tracks.

Central Vermont allow M. & W. R. to hold three empty platform cars in their yard to fill emergency orders and allow reclaim of per diem for the number of days cars are held before ordered by shipper, because Central Vermont switching crew is available only part of the day and to avoid complaints M. & W. R. is allowed to hold cars in their yard instead of holding them in C. V. yard.

[fol. 1071-18] New York, Chicago & St. Louis R. R. permits its box cars to be stored on tracks of A. C. & Y., Alton & Eastern, Litchfield & Madison, and South Buffalo R. R. when there is a surplus, and per diem is waived from dated delivered until placed for loading, or date returned empty if not used.

Northeast Oklahoma R. R. has joint arrangement with Joplin & Pittsburgh Ry. under which it allows 5 days on System cars, and J. & P. likewise allow 5 days free time on the-r System cars. This arrangement is made on account of using an inferior class of equipment in coal trade be-

tween these two roads, which equipment can be handled safely in light trains but it is not strong enough to be interchanged with and handled in heavy trains over trunk lines.

Northern Pacific Ry. allow Montana, Wyoming & Southern R. R. actual reclaim with maximum of 2 days on cars loaded with coal held on M. W. & S. at mines for billing instructions, in order to avoid having cars held for orders on Northern Pacific.

Oregon Electric Ry. is allowed reclaim of actual per diem on cars belonging to N. P. and G. N. Reason given by G. N.—Company's convenience; N. P. This is an arrangement with subsidiary lines to save empty car miles in moving cars home and returning them when required for loading.

Empty U. P. System cars held by Pacific Coast Ry. for prospective loading free of per diem. Reason given by U. P. same as shown under Spokane, Coeur d'Alene & Palouse.

C. B. & Q. allow Rapid City, Black Hills & Western R. R. reclaim actual time, maximum 4 days on single loads, actual time, maximum 6 days on double loads to help out a struggling connection that finds it very hard to meet its full per diem responsibility.

The Southern Pacific-Texas Louisiana Lines waive per diem on empty stock cars delivered to Texas Mexican and held by the latter account lack of storage room on Southern Pacific at or near the point of interchange. The stock movement occurs in large Volume over short periods of time.

Empty U. P. System cars held by Spokane International for prospective loading free of per diem. Reasons given by U. P. same as shown under Spokane Coeur d'Alene & Palouse.

St. Louis-San Francisco Ry. waive per diem on St. L.-S. F. cars during time held for prospective loading on Arkansas Valley Interurban Ry., providing cars are returned under load to St. L.-S. F.

Bessemer & Lake Erie allow Unity Rys. actual time with maximum of 2 days on any one car. Unity Rys. is a short line common carrier which supplies terminal service for traffic interchanged with it.

Washington, Idaho & Montana Ry. is permitted to hold cars for prospective loading free of per diem when deliv-

ered to it by C. M. & St. P., G. N., N. P., and U. P. Reasons given: C. M. & St. P.—Account cars held in storage for prospective C. M. & St. P. loading, and to find storage space during periods when we have large surplus of empties. G. N.—Company's convenience. N. P.—To protect our proportion of business originating on this line. Similar arrangement in effect with competing lines. U. P.—Same reasons as given under Spokane, Cœur d'Alene & Palouse, [fol. 1071-19] Western Pacific R. R. permit A. T. & S. F. to hold free of per diem, W. P. box cars prepared for powder loading, in order to avoid delay in furnishing prepared cars to the powder works located on A. T. & S. F. tracks: permit D. & R. G. to hold free of per diem, W. P. gondola and stock cars when held for storage purposes at request of car owner; permit San Francisco-Sacramento, Sacramento Northern and Nevada Northern to hold W. P. box and stock cars free of per diem when held in storage on request of car owner; permit the Southern Pacific to store Western Pacific tank cars for gasoline loading at Martinez. This traffic moves via Stockton to points on or via the Western Pacific and these are assigned to this particular traffic. The arrangement is made in order to eliminate storage at Stockton and to avoid confusion, delays, etc., by having the cars available for loading at point of origin.

Bessemer & Lake Erie allow Western Allegheny actual time, maximum 3 days, on any one car, because Western Allegheny is a short line common carrier which supplies terminal service for traffic interchanged with it.

Spokane International Ry. allow W. I. & M. Ry. reclaim on cars held at Potlatch for loading via S. I.-C. P. R. and M. St. P. & S. S. M. and in turn reclaim on Soo Line for their proportion of per diem on such cars, based on their percentage of revenue received on each loaded car so held. This is done to meet competition of other lines who store cars at Potlatch.

At Sandusky Ohio the Pennsylvania allows Norfolk & Western reclaim on cars (except those of Penna. ownership) loaded with Lake coal sent to Sandusky Docks on following basis.

1. Cars sent to Lake prior to opening of navigation. Pennsylvania to reclaim on all foreign cars to Pennsylvania

for time held at Sandusky prior to May 1st, less an arbitrary of two (2) days per day. On May 1st all cars standing at Sandusky are to be taken into the regular account as having arrived on May 1st and reclaim made against Norfolk & Western for one-half of time standing on and after May 1st.

2. Cars sent to Lake after opening of navigation. Pennsylvania to reclaim against Norfolk & Western for one-half of delay at Sandusky on all cars other than P. R. R. cars containing Lake coal from N. & W. mines, calculated from date of arrival of car at Sandusky to date first car of the cargo is dumped into vessel. This arrangement made for the purpose of escaping evil of embargoes on the part of the Lake roads and to induce such roads to accept and move toward the Lake front all the coal currently they can find storage for, in order that the dumping machines can be kept supplied at all times. Norfolk & Western mines are so far removed from the Lake ports that there is a risk of running out of coal if shipments are stopped absolutely every time there is a surplus at the docks. The arrangement provides for a free interchange of coal en route to the Lake ports.

The Hocking Valley is allowed by the Norfolk & Western reclaim on cars (except those of H. V. ownership) loaded with Lake coal sent to Toledo Docks on the following basis: [fol. 1071-20] At the close of each month the average time on H. V. rails on all coal cars, other than H. V. cars, is figured from time of receipt from N. & W. until vessels into which coal is loaded are placed at the dock. If the average detention exceeds eight (8) days, the H. V. will reclaim against the N. & W. for total number of days excess. When a consignee discontinues his Lake coal season, or when the season has been closed by limitation, as provided by tariff, it is agreed that when any cars, other than H. V. cars, containing Lake coal from N. & W. mines, are left over, which must be reconsigned, the H. V. is permitted to reclaim against the N. & W. for all per diem accrued on such cars while held awaiting reconsignment; per diem to be computed from date cars arrive at Toledo Docks or are placed in storage elsewhere until reconsignment notices are received from shippers.

The Atchison, Topeka & Santa Fe Railway, Chicago, Rock Island & Pacific Railway and Missouri Pacific Railroad al-

low a reclaim on their own cars stored by the Wichita Northwestern Railway for grain loading during the grain season. Reclaim is allowed from date cars are delivered to date placed for loading.

The Central Vermont Railway, owing to discontinuance of office at Rochester by the White River Railroad, has an arrangement whereby the Central Vermont pays car owners per diem and mileage accruing on the White River Railroad, and bills the latter for the total amount each month. This for the purpose of assisting the poor road.

Chicago, Ill., January 18, 1928.

[fol. 1072] Ex. 516 Before I. C. C. In Docket No. 17801

Circular No. 2265

American Railway Association

Daniel Willard, Chairman, Board of Directors. R. H. Aishton, President. W. G. Besler, First Vice-President. Hale Holden, Second Vice-President. J. E. Fairbanks, General Secretary and Treasurer. H. J. Forster, Assistant General Secretary and Assistant Treasurer

Office of the General Secretary, 30 Vesey Street, New York

June 16, 1922.

To the Members:

Referring to Circular No. 2260, dated May 25, 1922, accompanying letter ballot covering recommendations as to changes in Per Diem Rule 6.

The total membership of the Association is 398, and the cars owned and controlled by members 2,552,167. The majority requisite for approval is 200 memberships, owning and controlling 1,701,445 cars.

The vote on the revision of Per Diem Rule 6 is as follows:

Yes	307	Memberships,	representing	2,167,439 cars
No	43	"	"	282,404 "
Not voting	48	"	"	102,324 "

The proposition to amend Per Diem Rule 6, as indicated in Circular No. 2260, is, therefore, approved.

Please take notice, therefore, that the amended rule will become effective July 1, 1922.

The rule, as amended, is as follows:

Per Diem Rule 6

Previous form	Amended form
6. In case a subscriber delivers a car of *another* subscriber to a non-subscriber it shall *pay* to the owner *an amount equal to* the per diem accruing on the car while on such non-subscriber road. The owner will accept settlement for the use of the car only from the delivering subscriber, which shall make settlement with the non-subscriber.	6 (a) In case a subscriber delivers a car of *any* subscriber to a non-subscriber, it shall *be responsible* to the owner *for* the per diem accruing on the car while on such non-subscriber road. The owner will accept settlement for the use of the car only from the delivering subscriber, which shall make settlement with the non-subscriber *in accordance with Paragraph (b) of this rule.* *(b) Subscriber roads shall make settlement with their non-subscriber common carrier connections (other than roads which have been declared industrial common carriers) at the established per diem rate without any free time allowance and without reclaim.**

[*Matter in italics underscored in copy.]

On behalf of the Board of Directors.

Respectfully, J. E. Fairbanks, General Secretary.

Chgo., Ill.—April 28, 1927.

K

Ex. 517 Before I. C. C. in Docket No. 17801

American Railway Association Transportation Division

Comparative Statement for the Year 1925 Showing for the Roads for which the Birmingham Southern Rules have been Prescribed by the Interstate Commerce Commission: Actual Payments under Birmingham Southern Rules versus Settlement that would have Accrued under the American Railway Association Per Diem Rules

Name of Road	Controlling Industry		Settlement Accruing Under A. R. A. Per Diem Rules			Car Hire Paid Under Birmingham Southern Rules
			Gross Per Diem Accrued	Terminal Switching Reclaim	Net Per Diem Accrued	
Bay Terminal R. R.	Sun Oil Co.	*	$3,915	$3,299	$616	$10
Benwood & Wheeling Connecting Ry. Co.	National Tube Co.		29,967	26,714	3,253	None
Birmingham Southern R. R. Co.	Tennessee Coal & Iron Co.		210,015	71,766	138,249	13,972
Chicago Short Line Ry. Co.	Youngstown Sheet & Tube Co. and By-Products Coke Corp.		183,578	91,225	92,353	8,517
Genesee & Wyoming R. R. Co.	International Salt Co.		61,611	None	61,611	7,931
Illinois Northern Ry.	International Harvester Co.	*	186,395	153,712	32,683	1,878
Lake Erie & Fort Wayne R. R. Co.	Commercial Improvement Co. and a Rolling Mill (1926)		8,532	8,532	.....	169
Lakeside & Marblehead R. R. Co.	Kelley Island Lime & Transportation Co.		22,197	1,020	21,177	320
Lime Rock R. R. Co.	Rockland-Rockport Lime Co.	*	6,110	6,110	.....	34
McKeesport Connecting R. R. Co.	National Tube Co.		209,094	178,178	30,916	237
Manufacturers Junction Ry. Co.	Western Electric Corp.		82,489	76,984	5,505	431
[fol. 1073a]						
Moshassuck Valley R. R. Co.	Sayles Finishing Plants Inc. and Lorraine Mfg. Co.		12,365	None	12,365	None
Northampton & Bath R. R.	Atlas Portland Cement Co.	*	110,361	None	110,361	1,443
Owasco River Ry.	International Harvester Co.		11,701	11,701	.....	None
Pullman R. R.	Pullman Co.		96,613	66,640	29,973	1,765
Tionesta Valley Ry. Co.	Central Leather Co.	*	19,023	1,821	17,202	232
Valley & Silets R. R. Co.	Wm. W. Mitchell Co., affiliated with Cobb & Mitchell Co.	*	17,367	None	17,367	None
Total			$1,271,333	$697,702	$573,631	$36,904
Car Hire Paid by Above Roads					36,904	
Balance					$536,727	

* Per Diem figures are estimated based on four (4) months' actual figures reported.

• Covers twelve months September 1925 to August 1926 Inclusive.

H.

[fol. 1074] EX. 518 BEFORE I. C. C. IN DOCKET NO. 17801

List of 196 Steam Railroads in the United States Who Do Not Subscribe to the Car Service and Per Diem Agreement of the American Railway Association but make Settlement with their Direct Connections for the Use and Detention of Cars at the Established Per Diem Rate of $1.00 Per Day Without Any Free Time or Reclaim

Name of railroad	Miles operated	Revenue freight cars owned
Alabama Central R. R.	15.35	....
Alabama Central Ry	8.30	....
Alabama & Northwestern R. R.	21.00	....
Alabama & Western Florida R. R.	38.00	4
Alcolu R. R.	25.00	....
Alabama, Florida & Gulf R. R.	32.00	....
Amador Central R. R.	12.00	....
Angelina & Neches River R. R.	32.83	....
Apache Ry.	72.00	....
Arkansas Western Ry.	32.00	....
Aransas Harbor Terminal Ry.	6.81	....
Arizona Southern R. R.	20.52	2
Asherton & Gulf Ry.	32.10	2
Ashland Ry.	7.00	....
Atlantic & Carolina R. R.	9.52	....
Atlantic Northern Ry.	17.07	....
Augusta R. R.	1.50	....
Augusta Northern Ry.	11.20	....
Bamberg, Ehrhardt & Walterboro Ry.	14.40	....
Bartlett & Western R. R.	23.20	....
Beaver, Meade & Englewood R. R.	7.01	....
Big Sandy & Cumberland R. R.	33.08	....
[fol. 1074–1]		
Big Sandy & Kentucky River R. R.	24.00	....
Birmingham, Columbus & St. Andrews R. R.	38.00	....
Birmingham, Selma & Mobile	16.00	2
Black Mountain R. R.	10.60	....
Bloomsburg & Sullivan R. R.	29.03	1
Bonlee & Western Ry.	10.37	....
Bowden Ry.	12.00	....
Brimstone R. R. & Canal Co.	13.01	156
Bristol R. R.	6.14	....
Brookville & Ohio R. R.	10.00	....
Buffalo-Union Carolina R. R.	19.20	....
Cairo, Truman & Southern R. R.	17.95	....
California, Shasta & Eastern Ry.	16.30	....
Camino, Placerville & Lake Tahoe R. R.	8.05	....
Carbon County Ry.	4.80	....
Carolina Southern Ry.	22.55	....
Caro Northern Ry.	16.68	....
Cassville & Exeter Ry.	5.00	....
Cazenovia & Southern R. R.	5.99	....
Central West Va. & Sou. R. R.	32.00	....
Chaffee R. R.	3.25	....
Charlotte, Monroe & Columbia	18.00	....
Clarendon & Pittsford R. R.	20.28	225
Crystal River & San Juan R. R.	27.98	....
Cisco & Northeastern Ry.	28.00	....
Coal Fields Ry.	22.00	....
Collins & Glenville R. R.	24.00	....
[fol. 1074–2]		
Dansville & Mt. Morris R. R.	15.54	....
Deep Creek R. R.	46.00	....

Name of railroad	Miles operated	Revenue freight cars owned
DeKalb & Western R. R.	16.00	6
Delaware Valley Ry.	12.40	....
Detroit Terminal	18.00	....
Dover & Southbound R. R.	24.77	....
East Berlin R. R.	8.00	....
East Broad Top R. R. & Coal Co.	51.06	....
East Texas & Gulf Ry.	3.60	....
Edgemoor & Manetta Ry.	2.60	....
Eldorado & Wesson Ry.	10.19	....
Elkin & Allegheny R. R.	15.00	....
Emmitsburg R. R.	7.30	....
Euclid R. R.	3.70	....
Fellsmere R. R.	10.79	....
Flint River & Northeastern R. R. (by A. C. L.)	23.03	....
Florida Central & Gulf	33.87	....
Gideon & North Island R. R.	15.30	....
Glenfield & Western Ry.	19.45	....
Graham County R. R.	12.00	....
Greene County R. R.	19.69	....
Gulf & Northern Ry.	14.82	....
Gulf & Sabine River R. R.	15.14	....
Hardwick & Woodbury R. R.	10.50	....
Hickory Valley R. R.	5.52	....
Hillsboro & Northeastern Ry.	5.49	....
[fol. 1074–3]		
Indian Valley R. R.	21.60	....
Inter California Ry.	57.00	....
Intermountain Ry.	40.33	120
Jefferson & Northwestern Ry.	40.00	....
Jefferson Southwestern R. R.	13.87	8
Kanawha Central Ry.	4.77	2
Kane & Elk R. R.	13.00	9
Kelleys Creek Ry.	5.00	....
Kelleys Creek & Northwestern Ry.	6.35	166
Kentucky & Tennessee Ry.	19.68	69
Kinston-Carolina R. R.	30.47	....
Knox R. R.	8.00	1
Kosciusko & Southeastern R. R.	16.30	....
LaCrosse & Southeastern Ry.	42.61	....
Lake Champlain & Moriah R. R.	6.62	66
Leesville, Slagle & Eastern Ry.	10.35	1
Lima & Defiance R. R.	42.00	....
Lowville & Beaver River Ry.	10.44	....
Lufkin, Hemphill & Gulf	11.09	....
Manilla & Southwestern Ry.	6.00	....
Marcellus & Otisco	9.80	....
Marinette, Tomahawk & Western R. R.	37.05	50
Marion Ry. Corp.	9.47	....
Marshall, Elysian Fields & Southeastern Ry.	17.50	....
Maryland & Delaware Coast R. R.	47.40	....
Maxton, Alma & Southbound R. R.	15.15	....
Middleburg & Schoharie R. R.	5.33	....
Milltown Air Line R. R.	10.00	....
[fol. 1074–4]		
Mineral Point & Northern Ry.	30.60	....
Mississippian Ry.	24.50	....
Mississippi Eastern Ry.	16.10	....
Mississippi & Alabama R. R.	17.20	4
Mississippi & Western Ry.	11.75	....

Name of railroad	Miles operated	Revenue freight cars owned
Missouri, Illinois Bridge & Belt R. R.	5.93	....
Mobile & Gulf	34.00	....
Moore Central Ry.	22.50	....
Morehead & North Fork R. R.	24.44	....
Morgan & Fentress Ry.	15.50	....
Moscow, Camden & San Augustine R. R.	7.00	....
Mt. Jewett, Kinzua & Riterville R. R.	24.03	....
Narragansett Pier R. R.	8.03	....
Nashville & Atlantic R. R.	11.95	....
Neame, Carson & Southern R. R.	33.49	....
New York & Pennsylvania R. R.	56.13	30
North Louisiana & Gulf R. R.	25.70	2
Norton & Northern R. R.	5.50	....
Okmulgee Northern Ry.	9.90	....
Ontanagon R. R.	15.00	....
Oregon-California & Eastern Ry.	43.00	....
Ozark Southern Ry.	14.00	....
Pearl River Valley R. R.	25.34	10
Peninsular Ry.	15.62	....
Pickens R. R.	9.30	....
Pigeon River Ry.	17.00	....
[fol. 1074–5]		
Pine Bluff & Northern Ry.	7.99	....
Pittsburgh & Susquehanna R. R.	18.29	....
Port Bolivar Iron Ore R. R.	29.61	....
Poteau & Cavanal Mt. R. R.	3.40	....
Quakerstown & Bethlehem R. R.	15.00	....
Quincy R. R.	5.29	....
Ray & Gila Valley R. R.	6.65	....
Richmond Belt Ry.	6.98	....
Rio Grande Ry.	26.62	....
Robey & Northern R. R.	4.54	....
Rochester & Eastern	.....	....
Rockcastle River Ry.	13.00	....
Rockdale, Sandow & Southern R. R.	6.00	....
St. John & Ophir R. R.	8.56	....
St. Louis & Ohio River R. R.	11.68	159
St. Mary's	10.75	....
Sacramento Valley & Eastern Ry.	14.46	....
Salem, Winona & Southern R. R.	21.50	100
San Benito & Rio Grande Valley Ry.	73.42	9
Sand Springs Ry.	10.00	43
San Luis Central	15.21	....
San Joaquin & Eastern R. R.	35.91	18
Santa Maria Valley R. R.	22.57	2
Schoharie Valley R. R.	4.26	....
Sharpsville R. R.	21.10	....
[fol. 1074-6]		
Shearwood Ry.	38.00	....
Sheffield & Tionesta Valley Ry.	40.08	39
Skaneateles Ry.	5.00	....
Sligo & Eastern R. R.	33.30	....
Smithonia & Dunlap R. R.	7.00	....
South Manchester R. R.	1.94	....
Statenville Ry.	14.00	....
Statesboro Northern Ry.	42.50	....
Sterling Mountain Ry.	8.00	....
Stockton Terminal & Eastern R. R.	18.50	....
Stone Harbor Terminal R. R.	4.53	....
Sumter & Choctaw Ry.	22.66	91

Name of railroad	Miles operated	Revenue freight cars owned
Suncook Valley R. R.	22.12	....
Susquehanna & New York R. R.	67.72	78
Talbotton R. R.	6.63	....
Tennessee R. R.	60.00	....
Tennessee, Kentucky & Northern R. R.	19.00	....
Timpson & Henderson Ry.	34.00	....
Townsville R. R.	12.00	....
Tooele Valley Ry.	7.27	127
Traverse City, Leelanau, Manistique R. R.	24.04	....
Trinity Valley & Northern Ry.	18.00	....
Trinity Valley Southern	6.00	....
Tucson, Cornelia & Gila Bend R. R.	44.34	34
Tuskegee R. R.	6.12	....
Union Point & White Plains R. R.	13.64	....
Uvalde & Northern Ry.	37.10	....
[fol. 1074–7]		
Ventura County R. R.	20.92	....
Virginia Blue Ridge	19.28	....
Waycross & Southern R. R.	20.00	....
Warrenton R. R.	3.00	....
Warrior River Terminal	19.30	40
Washington, Brandywine & Pt. Lookout R. R.	21.00	....
Washington & Lincolnton R. R.	20.10	....
West Virginia Midland Ry.	35.84	....
Wildwood & Delaware Bay Short Line	4.20	....
Wilmington, Brunswick & Southern R. R.	30.20	....
Winfield R. R.	13.02	....
Winifrede R. R.	9.45	....
Wood River Branch R. R.	5.62	....
Yreka R. R.	7.37	....
Yuma Valley R. R.	25.00	....

Chicago, Ill., March 15, 1928.

J.

[fol. 1075] Ex. 520 Before I. C. C. In Docket No. 17801

Freight Car Ownership, Class One Roads, as of March First

1921	2,345,638
1922	2,321,283
1923	2,315,490
1924	2,310,570
1925	2,346,686
1926	2,345,511
1927	2,334,917
1928	2,306,063

(Here follows Exhibit 40, side folios 1076, 1076-1, 2, and 3.)

EX. 40 INTRODUCED IN COURT PROCEEDING

Statement by the Southern Railway System Showing for the Calendar Year 1929 Data in Connection with Freight Cars Interchanged between it and Short Line Connections; S
Short Lines Being Less Than One Hundred Miles in Length Operating Outside of Switching Districts and Which Do Not Originate Coal or Perform an Intermediate Line Haul Service Between the Sou. Ry. System and Other Railroads

1	2	3	4	5	6			7	
Name of Short Line	Subscriber	Mileage	*Cars	Connections	Total Number Loaded Cars Interchanged			Total Number Days Ac Short Line for Cars R in Column 6	
					A Per Diem Cars	B Mileage Cars	C Total Cars	A Per Diem Car Days	B Mileage Car Days
Alabama & Northwestern	No	21	None	1—Sou.	2642	8	2650	7624	2
Augusta Northern	No	11	None	1—Sou.	2198	1	2199	3320	2
Blue & Allegheny	No	16	None	1—Sou.	585	33	618	1640	138
Evansville & Ohio Valley	Yes	91	132	6—C. & E. I.–C. C. C. & S. L.–E. I. & T. H.–I. C.–L. & N.–Sou.	1108	17	1125	2937	51
Gainesville Midland	Yes	74	4	6—Sou. & 5 other railroads	634	35	669	3032	168
Greenville & Northern	No	23	None	3—C. & W. C.–P. & N.–Sou.	1202	5	1207	3952	16
Gainesville & Northwestern	Yes	30	2	2—G. M.–Sou.	1419	25	1444	5181	195
Graham County	No	12	None	1—Sou.	2957	16	2973	6316	76
Hartwell	Yes	10	None	1—Sou.	1751	107	1858	1624	175
Jacksonville, Gainesville & Gulf	Yes	56	None	3—A. C. L.–G. S. & F.–S. A. L.	16	5	21	40	13
Little River	(1)Yes	8	30	1—Sou.	2271	.....	2271	3820	.....
Louisiana Southern	Yes	65	None	12—So. Ry. & 11 other railroads	1130	2910	4040	3756	16439
Mississippi Southern	(3)Yes	70	73	2—G. & S. I.–Sou.	3119	46	3165	11550	149
Mobile & Gulf	No	34	None	2—M. & O.–Sou.	2143	71	2214	7658	188
Ocilla & Western	(2)Yes	30	10	1—Sou.	3091	76	3167	5153	207
Pearl River Valley	No	30	10	1—Sou.	8692	17	8709	29416	159
Pelham	No	9	None	1—Sou.	2838	35	2873	5536	58
Pigeon River	No	13	None	1—Sou.	481	.....	481	2584	.....
Sumter & Choctaw	No	23	91	1—Sou.	2079	1	2080	5820	1
Virginia Blue Ridge	No	19	None	1—Sou.	631	3	634	1437	7
Washington & Old Dominion	Yes	72	11	5—B. & O.–C. & O.–R. F. & P.–Sou.–Pa.	1032	4	1036	4378	28
Warrior River Terminal	No	19	40	7—Sou. & 6 other railroads	1885	.....	1885	7987	.....
				Totals	43904	3415	47319	124761	18072

(1) Became a Non-subscriber effective May 21, 1930.
(2) Became a Non-subscriber effective July 31, 1930.
(3) Becomes a Non-subscriber effective Nov. 1, 1930.

* Number of Revenue Freight Cars owned and used in Interchange Service.

[Id. 1076–1]

Statement by the Southern Railway System Showing for the Calendar Year 1929 Data in Connection with Freight Cars Interchanged between it and Short Line Connections; S
Short Lines Being Less Than One Hundred Miles in Length Operating Outside of Switching Districts and Which Originate Coal

1	2	3	4	5	6			7			8			9	
Name of Short Line	Subscriber	Mileage	*Cars	Connections	Total Number of Cars Received from Short Line Loaded with Coal Originating at Mines Located on the Short Line			Total Number Days Accruing on Short Line for Cars Reported in Column 6			Total Number Loaded Cars Interchanged (Other Than Coal Traffic Originating on Short Line)			Total Number Accruing on S for Cars Rep Column	
					A Per Diem Cars	B Mileage Cars	C Total Cars	A Per Diem Car Days	B Mileage Car Days	C Total Car Days	A Per Diem Cars	B Mileage Cars	C Total Cars	A Per Diem Car Days	B Mile age Car Days
Alabama Central	No	13	None	3—I. C.–S. L. S. F.–Sou.	152	.....	152	494	.....	494	20	.....	20	78	.....
Interstate	Yes	79	3217	5—Clinchfield–L. & N. N. & W.–N. & N.–Sou.	5720 #12466	.....	5720 #12466	17846	.....	17846	3540 #931	6	3546 #931	1145	.....
Kentucky & Tennessee	No	20	81	1—Sou.	19313	.....	19313	3173	.....	3173	1783	51	1834	1279	.....
Tennessee	No	45	None	1—Sou.	10456	.....	10456	17919	.....	17919	2741	.....	2741	9522	.....
				Totals	48107		48107	39432		39432	9015	57	9072	12024	

Private R. R. Cars.

ement by the Southern Railway System Showing for the Calendar Year 1929 Data in Connection with Freight Cars Interchanged between it and Short Line Connections; Such Short Lines Being Less Than One Hundred Miles in Length Operating Outside of Switching Districts and Which Do Not Originate Coal or Perform an Intermediate Line Haul Service Between the Sou. Ry. System and Other Railroads

1	2	3	4	5	6			7		
Name of Short Line	Subscriber	Mileage	*Cars	Connections	Total Number Loaded Cars Interchanged			Total Number Days Accruing on Short Line for Cars Reported in Column 6		
					A Per Diem Cars	B Mileage Cars	C Total Cars	A Per Diem Car Days	B Mileage Car Days	C Total Car Days
Northwestern	No	21	None	1—Sou.	2642	8	2650	7624	2	7626
orthern	No	11	None	1—Sou.	2198	1	2199	3320	2	3322
legheny	No	16	None	1—Sou.	585	33	618	1640	138	1778
& Ohio Valley	Yes	91	132	6—C. & E. I.–C. C. C. & S. L.–E. I. & T. H.–I. C.–L. & N.–Sou.	1108	17	1125	2937	51	2988
Midland	Yes	74	4	6—Sou. & 5 other railroads	634	35	669	3032	168	3200
& Northern	No	23	None	3—C. & W. C.–P. & N.–Sou.	1202	5	1207	3952	16	3968
& Northwestern	Yes	30	2	2—G. M.–Sou.	1419	25	1444	5181	195	5376
unty	No	12	None	1—Sou.	2957	16	2973	6316	76	6392
	Yes	10	None	1—Sou.	1751	107	1858	1624	175	1799
, Gainesville & Gulf	Yes	56	None	3—A. C. L.–G. S. & F.–S. A. L.	16	5	21	40	13	53
	(1)Yes	8	30	1—Sou.	2271	.....	2271	3820	.....	3820
Southern	Yes	65	None	12—So. Ry. & 11 other railroads	1130	2910	4040	3756	16439	20195
Southern	(3)Yes	70	73	2—G. & S. I.–Sou.	3119	46	3165	11550	149	11699
Gulf	No	34	None	2—M. & O.–Sou.	2143	71	2214	7658	188	7846
Western	(2)Yes	30	10	1—Sou.	3091	76	3167	5153	207	5360
Valley	No	30	10	1—Sou.	8692	17	8709	29416	159	29575
	No	9	None	1—Sou.	2838	35	2873	5536	58	5594
r	No	13	None	1—Sou.	481	.....	481	2584	.....	2584
Choctaw	No	23	91	1—Sou.	2079	1	2080	5820	1	5821
e Ridge	No	19	None	1—Sou.	631	3	634	1437	7	1444
& Old Dominion	Yes	72	11	5—B. & O.–C. & O.–R. F. & P.–Sou.–Pa.	1032	4	1036	4378	28	4406
er Terminal	No	19	40	7—Sou. & 6 other railroads	1885	.....	1885	7987	.....	7987
				Totals	43904	3415	47319	124761	18072	142833

ame a Non-subscriber effective May 21, 1930.
ame a Non-subscriber effective July 31, 1930.
omes a Non-subscriber effective Nov. 1, 1930.

er of Revenue Freight Cars owned and used in Interchange Service.

ment by the Southern Railway System Showing for the Calendar Year 1929 Data in Connection with Freight Cars Interchanged between it and Short Line Connections; Such Short Lines Being Less Than One Hundred Miles in Length Operating Outside of Switching Districts and Which Originate Coal

1	2	3	4	5	6			7			8			9		
Short Line	Subscriber	Mileage	*Cars	Connections	Total Number of Cars Received from Short Line Loaded with Coal Originating at Mines Located on the Short Line			Total Number Days Accruing on Short Line for Cars Reported in Column 6			Total Number Loaded Cars Interchanged (Other Than Coal Traffic Originating on Short Line)			Total Number of Days Accruing on Short Line for Cars Reported in Column 8		
					A Per Diem Cars	B Mileage Cars	C Total Cars	A Per Diem Car Days	B Mileage Car Days	C Total Car Days	A Per Diem Cars	B Mileage Cars	C Total Cars	A Per Diem Car Days	B Mileage Car Days	C Total Car Days
ntral	No	13	None	3—I. C.–S. L. S. F.–Sou.	152	.....	152	494	.....	494	20	.....	20	78	.....	78
	Yes	79	3217	5—Clinchfield–L. & N.	5720	.....	5720	17846	.....	17846	3540	6	3546	1145	28	1173
				N. & W.–N. & N.–Sou.	#12466	.....	#12466	.....	.....	.....	#931	.....	#931	.....	.....	.....
Tennessee	No	20	81	1—Sou.	19313	.....	19313	3173	.....	3173	1783	51	1834	1279	11	1290
	No	45	None	1—Sou.	10456	.....	10456	17919	.....	17919	2741	.....	2741	9522	.....	9522
				Totals	48107		48107	39432		39432	9015	57	9072	12024	39	12063

ote R. R. Cars.

[fol. 1076-2]

Statement by the Southern Railway System Showing for the Calendar Year 1929 Data in Connection with Freight Cars Interchanged between it and Short Line Connections Operating Outside of Switching Districts and Which Perform Intermediate Line Haul Service between the Sou. Ry. System

1	2	3	4	5	6				
					Total Number Loaded Cars Received from Short Line Which Originated at Points Beyond the Short Line			Total Num Cars Deliv Short Line Destined to yond the	
Name of Short Line	Subscriber	Mileage	*Cars	Connections	A	B	C	A	
					Per Diem Cars	Mileage Cars	Total Cars	Per Diem Cars	M a C
Bamberg, Erhardt & Walterboro	No	14	None	2—A. C. L.-Sou	35	....	35	21	
Buffalo-Union Carolina	No	20	None	2—S. A. L.-Sou	2	....	2	13	
Bonhomie & Hattiesburg Southern	Yes	26	None	4—Miss. Cent.-G. & S. I.-Sou-G. M. & N.	8	9	17	1	
Columbia, Newberry & Laurens	Yes	75	56	4—A. C. L.-C. & W. C.-S. A. L. & N.-Sou	65	....	65	41	
Durham & Southern	Yes	59	1	5—A. C. L.-N. & W.-N. S.-S. A. L.-Sou	5	....	5	4	
East Tenn. & Western N. Carolina	Yes	36	8	2—Clinchfield-Sou	8	....	8	1	
Frankfort & Cincinnati	Yes	41	None	3—C. N. O. & T. P.-L. & N.-Sou	11	....	11	3	
Ga. Ashburn Sylvester & Camilla	Yes	51	None	3—A. C. L.-G. N.-Sou	664	35	699	276	
Ga. Southwestern & Gulf	Yes	36	12	6—Sou. & 5 other railroads	24	....	24	50	
High Point Thomasville & Denton	Yes	35	32	3—H. P. R. A. & S.-Sou.-W. S. S.	11	....	11	....	
Lancaster & Chester	Yes	29	None	3—C. & N.-S. A. L.-Sou	5	....	5	....	
Macon, Dublin & Savannah	Yes	92	None	7—Sou. & 6 other railroads	5244	3095	8339	4055	
South Georgia	Yes	82	14	5—A. C. L.-G. & F.-G. S. & F.-L. O. P. & G.-S. A. L.	191	....	191	1035	
Winston-Salem Southbound	Yes	94	191	7—Sou. & 6 other railroads	178	9	187	113	
Virginia Central	Yes	38	29	4—B. & V. S.-C. & O.-R. F. & P.-Sou.	244	....	244	506	
				Totals	6695	3148	9843	6119	1

* Number of Revenue Freight Cars owned and used in Interchange Service.

[fol. 1076-3]

Statement by the Southern Railway System Showing for the Calendar Year 1929 Cars Handled in Terminal Switching Service by it for the Account of Short Line Connections and the Sou. Ry. System Service for Account

1	2	3	4	5	6	
Name of Short Line	Subscriber	Mileage	*Cars	Connections	Total Number Cars Handled by the Sou. Ry. in Terminal Switching Service and Delivered to and/or Received from Short Line	Total Nu Handle Short Line Switching Se livered to an from S
Bamberg, Erhardt & Walterboro	No	14	None	2—A. C. L.-Sou	19	
Columbia, Newberry & Laurens	Yes	75	56	4—A. C. L.-C. & W. C.-S. A. L.-Sou	1078	
Durham & Southern	Yes	59	1	5—A. C. L.-N. & W.-N. S.-S. A. L.-Sou	2921	
Evansville Suburban & Newburgh	Yes	25	None	3—E. & O. V.-I. C.-Sou	....	
Evansville & Ohio Valley	Yes	91	132	6—So. Ry. and 5 other railroads	278	
East Tenn. & Western N. Carolina	Yes	36	8	2—Clinchfield-Sou	231	17
Frankfort & Cincinnati	Yes	41	None	3—C. N. O. & T. P.-Sou.-L. & N.	249	
Gainesville & Northwestern	Yes	30	2	2—G. M. & N.-Sou	13	
Gainesville Midland	Yes	74	4	6—Sou. & 5 other railroads	103	
Ga. Ashburn Sylvester & Camilla	Yes	51	None	3—A. C. L.-G. N.-Sou	....	
Georgia Southwestern & Gulf	Yes	36	12	6—Sou. & 5 other railroads	140	
High Point, Thomasville & Denton	Yes	35	32	3—H. P. R. A. & S.-Sou.-W. S. S.	7866	1
Interstate	Yes	79	3217	5—Clinchfield-L. & N.-N. & W.-N. & N.-Sou	1854	
Lancaster & Chester	Yes	29	None	3—C. & N.-S. A. L.-Sou	22	
[illegible]	Yes	85	None	[illegible]	[illegible]	

he Calendar Year 1929 Data in Connection with Freight Cars Interchanged between it and Short Line Connections; Such Short Lines Being Less Than One Hundred Miles in Length utside of Switching Districts and Which Perform Intermediate Line Haul Service between the Sou. Ry. System and Other Railroads

3	4	5	6			7			8			9		
			Total Number Loaded Cars Received from Short Line Which Originated at Points Beyond the Short Line			Total Number Loaded Cars Delivered to the Short Line Which Were Destined to Points Beyond the Short Line			Total Number Loaded Cars Interchanged Which Originated or Terminated at Stations on the Short Line			Total Number Days Accruing on Short Line for Cars Reported under Column 8		
ileage	*Cars	Connections	A	B	C	A	B	C	A	B	C	A	B	C
			Per Diem Cars	Mileage Cars	Total Cars	Per Diem Cars	Mileage Cars	Total Cars	Per Diem Cars	Mileage Cars	Total Cars	Per Diem Car Days	Mileage Car Days	Total Car Days
14	None	2—A. C. L.-Sou	35	....	35	21	....	21	406	17	423	930	60	990
20	None	2—S. A. L.-Sou	2	....	2	13	....	13	466	....	466	1127	....	1127
26	None	4—Miss. Cent.-G. & S. I.-Sou-G. M. & N.	8	9	17	1	....	1	402	3	405	1205	7	1212
75	56	4—A. C. L.-C. & W. C.-S. A. L. & N.-Sou	65	....	65	41	....	41	1222	223	1445	6897	558	7455
59	1	5—A. C. L.-N. & W.-N. S.-S. A. L.-Sou	5	....	5	4	....	4	1271	29	1300	6147	62	6209
36	8	2—Clinchfield-Sou	8	....	8	1	....	1	3613	510	4123	11106	2456	13562
41	None	3—C. N. O. & T. P.-L. & N.-Sou	11	....	11	3	....	3	2929	212	3141	9796	1069	10365
51	None	3—A. C. L.-G. N.-Sou	664	35	699	276	629	905	1353	192	1545	4141	582	4723
36	12	6—Sou. & 5 other railroads	24	....	24	50	....	50	1477	4856	6333	77	263	340
35	32	3—H. P. R. A. & S.-Sou.-W. S. S	11	....	11	....	....	....	570	2	572	2316	9	2325
29	None	3—C. & N.-S. A. L.-Sou	5	....	5	....	....	....	3578	272	3850	7606	634	8240
92	None	7—Sou. & 6 other railroads	5244	3095	8339	4055	520	4575	1210	3	1213	6294	23	6317
82	14	5—A. C. L.-G. & F.-G. S. & F.-L. O. P. & G.-S. A. L.	191	....	191	1035	....	1035	1474	57	1531	7316	105	7421
94	191	7—Sou. & 6 other railroads	178	9	187	113	1	114	449	5	454	1593	17	1610
38	29	4—B. & V. S.-C. & O.-R. F. & P.-Sou	244	....	244	506	....	506	116	7	123	405	31	439
		Totals	6695	3148	9843	6119	1150	7269	20536	6388	26924	66956	5876	72832

nterchange Service.

Calendar Year 1929 Cars Handled in Terminal Switching Service by it for the Account of Short Line Connections and also Cars Handled by Short Line Connections in Terminal Switching the Sou. Ry. System Service for Account

3	4	5	6	7	8	9
ileage	*Cars	Connections	Total Number Cars Handled by the Sou. Ry. in Terminal Switching Service and Delivered to and/or Received from Short Line	Total Number Cars Handled by the Short Line in Terminal Switching Service and Delivered to and/or Received from Sou. Ry.	Average Number Days Detention Per Car on the Sou. Ry. for Cars Reported Under Column 6	Average Number Days Detention Per Car Accruing on Short Line for Cars Reported in Column 7
14	None	2—A. C. L.-Sou	19	185	2.00	2.00
75	56	4—A. C. L.-C. & W. C.-S. A. L.-Sou	1078	476	3.65	2.70
59	1	5—A. C. L.-N. & W.-N. S.-S. A. L.-Sou	2921	158	3.05	2.77
25	None	3—E. & O. V.-I. C.-Sou	....	502	....	4.50
91	132	6—So. Ry. and 5 other railroads	278	131	3.00	3.00
36	8	2—Clinchfield-Sou	231	1776	3.55	2.54
41	None	3—C. N. O. & T. P.-Sou.-L. & N.	249	51	4.00	4.00
30	2	2—G. M. & N.-Sou	13	....	4.00	....
74	4	6—Sou. & 5 other railroads	103	501	3.51	4.00
51	None	3—A. C. L.-G. N.-Sou	....	77	....	4.00
36	12	6—Sou. & 5 other railroads	140	....	3.21	....
35	32	3—H. P. R. A. & S.-Sou.-W. S. S.	7866	1593	4.00	4.00
79	3217	5—Clinchfield-L. & N.-N. & W.-N. & N.-Sou	1854	179	2.00	4.00
29	None	3—C. & N.-S. A. L.-Sou	22	369	4.00	4.00
55	None	12—Sou. and 11 other railroads	545	179	3.19	3.00

					Per Diem Cars	Mileage Cars	Total Cars	Per Diem Cars	Mileage Cars
Bamberg, Erhardt & Walterboro	No	14	None	2—A. C. L.-Sou	35	....	35	21	..
Buffalo-Union Carolina	No	20	None	2—S. A. L.-Sou	2	....	2	13	..
Bonhomie & Hattiesburg Southern	Yes	26	None	4—Miss. Cent.-G. & S. I.-Sou-G. M. & N.	8	9	17	1	..
Columbia, Newberry & Laurens	Yes	75	56	4—A. C. L.-C. & W. C.-S. A. L. & N.-Sou	65	....	65	41	..
Durham & Southern	Yes	59	1	5—A. C. L.-N. & W.-N. S.-S. A. L.-Sou	5	....	5	4	..
East Tenn. & Western N. Carolina	Yes	36	8	2—Clinchfield-Sou	8	....	8	1	..
Frankfort & Cincinnati	Yes	41	None	3—C. N. O. & T. P.-L. & N.-Sou	11	....	11	3	..
Ga. Ashburn Sylvester & Camilla	Yes	51	None	3—A. C. L.-G. N.-Sou	664	35	699	276	6
Ga. Southwestern & Gulf	Yes	36	12	6—Sou. & 5 other railroads	24	....	24	50	..
High Point Thomasville & Denton	Yes	35	32	3—H. P. R. A. & S.-Sou.-W. S. S	11	....	11	....	..
Lancaster & Chester	Yes	29	None	3—C. & N.-S. A. L.-Sou	5	....	5	....	..
Macon, Dublin & Savannah	Yes	92	None	7—Sou. & 6 other railroads	5244	3095	8339	4055	5
South Georgia	Yes	82	14	5—A. C. L.-G. & F.-G. S. & F.-L. O. P. & G.-S. A. L.	191	....	191	1035	..
Winston-Salem Southbound	Yes	94	191	7—Sou. & 6 other railroads	178	9	187	113	
Virginia Central	Yes	38	29	4—B. & V. S.-C. & O.-R. F. & P.-Sou	244	....	244	506	..
				Totals	6695	3148	9843	6119	11

* Number of Revenue Freight Cars owned and used in Interchange Service.

[fol. 1076-3]

Statement by the Southern Railway System Showing for the Calendar Year 1929 Cars Handled in Terminal Switching Service by it for the Account of Short Line Connections and the Sou. Ry. System Service for Account

1	2	3	4	5	6	
Name of Short Line	Subscriber	Mileage	*Cars	Connections	Total Number Cars Handled by the Sou. Ry. in Terminal Switching Service and Delivered to and/or Received from Short Line	Total Nu Handle Short Line Switching Se livered to an from S
Bamberg, Erhardt & Walterboro	No	14	None	2—A. C. L.-Sou	19	
Columbia, Newberry & Laurens	Yes	75	56	4—A. C. L.-C. & W. C.-S. A. L.-Sou	1078	
Durham & Southern	Yes	59	1	5—A. C. L.-N. & W.-N. S.-S. A. L.-Sou	2921	
Evansville, Suburban & Newburgh	Yes	25	None	3—E. & O. V.-I. C.-Sou	....	
Evansville & Ohio Valley	Yes	91	132	6—So. Ry. and 5 other railroads	278	
East Tenn. & Western N. Carolina	Yes	36	8	2—Clinchfield-Sou	231	1
Frankfort & Cincinnati	Yes	41	None	3—C. N. O. & T. P.-Sou.-L. & N.	249	
Gainesville & Northwestern	Yes	30	2	2—G. M. & N.-Sou	13	
Gainesville Midland	Yes	74	4	6—Sou. & 5 other railroads	103	
Ga. Ashburn Sylvester & Camilla	Yes	51	None	3—A. C. L.-G. N.-Sou	....	
Georgia Southwestern & Gulf	Yes	36	12	6—Sou. & 5 other railroads	140	
High Point, Thomasville & Denton	Yes	35	32	3—H. P. R. A. & S.-Sou.-W. S. S.	7866	1
Interstate	Yes	79	3217	5—Clinchfield-L. & N.-N. & W.-N. & N.-Sou	1854	
Lancaster & Chester	Yes	29	None	3—C. & N.-S. A. L.-Sou	22	
Louisiana Southern	Yes	65	None	12—Sou. and 11 other railroads	545	
Mississippi Southern	(2)Yes	70	73	2—G. & S. I.-Sou	16	
Macon, Dublin & Savannah	Yes	92	None	7—Sou. & 6 other railroads	1046	
Oneida & Western	(1)Yes	30	10	1—Sou	22	
South Georgia	Yes	82	14	5—A. C. L.-G. & F.-G. S. & F.-L. O. P. & G.-S. A. L.	2	
St. Louis & Belleville Electric	Yes	14	493	27—Sou. and 26 other railroads	17	
St. Louis & O'Fallon	Yes	21	567	28—Sou. and 27 other railroads	65	
Virginia Central	Yes	38	29	4—B. & V. S.-C. & O.-R. F. & P.-Sou	58	
Winston-Salem Southbound	Yes	94	191	7—Sou. & 6 other railroads	5017	
Alabama Central	No	13	None	3—I. C.-S. L. S. F.-Sou	....	
Buffalo-Union Carolina	No	20	None	2—S. A. L.-Sou	436	
Greenville & Northern	No	23	None	3—C. & W. C.-P. & N.-Sou	....	
Mobile & Gulf	No	34	None	2—M. & O.-Sou	25	
Tennessee	No	45	None	1—Sou	265	
				Totals	22288	1

(1) Became a Non-subscriber effective July 31, 1930.
(2) Becomes a Non-subscriber effective Nov. 1, 1930.

* Number of Revenue Freight Cars owned and used in Interchange Service.

			Per Diem Cars	Mileage Cars	Total Cars	Per Diem Cars	Mileage Cars	Total Cars	Per Diem Cars	Mileage Cars	Total Cars	Per Diem Car Days	Mileage Car Days	Total Car Days
14	None	2—A. C. L.–Sou.	35	....	35	21	....	21	406	17	423	930	60	990
20	None	2—S. A. L.–Sou.	2	....	2	13	....	13	466	....	466	1127	....	1127
26	None	4—Miss. Cent.–G. & S. I.–Sou–G. M. & N.	8	9	17	1	....	1	402	3	405	1205	7	1212
75	56	4—A. C. L.–C. & W. C.–S. A. L. & N.–Sou	65	....	65	41	....	41	1222	223	1445	6897	558	7455
59	1	5—A. C. L.–N. & W.–N. S.–S. A. L.–Sou.	5	....	5	4	....	4	1271	29	1300	6147	62	6209
36	8	2—Clinchfield–Sou.	8	....	8	1	....	1	3613	510	4123	11106	2456	13562
41	None	3—C. N. O. & T. P.–L. & N.–Sou.	11	....	11	3	....	3	2929	212	3141	9796	1069	10365
51	None	3—A. C. L.–G. N.–Sou.	664	35	699	276	629	905	1353	192	1545	4141	582	4723
36	12	6—Sou. & 5 other railroads	24	....	24	50	....	50	1477	4856	6333	77	263	340
35	32	3—H. P. R. A. & S.–Sou.–W. S. S.	11	....	11	....	....	....	570	2	572	2316	9	2325
29	None	3—C. & N.–S. A. L.–Sou.	5	....	5	....	....	....	3578	272	3850	7606	634	8240
92	None	7—Sou. & 6 other railroads	5244	3095	8339	4055	520	4575	1210	3	1213	6294	23	6317
82	14	5—A. C. L.–G. & F.–G. S. & F.–L. O. P. & G.–S. A. L.	191	....	191	1035	....	1035	1474	57	1531	7316	105	7421
94	191	7—Sou. & 6 other railroads	178	9	187	113	1	114	449	5	454	1593	17	1610
38	29	4—B. & V. S.–C. & O.–R. F. & P.–Sou.	244	....	244	506	....	506	116	7	123	405	31	439
		Totals	6695	3148	9843	6119	1150	7269	20536	6388	26924	66956	5876	72832

Interchange Service.

e Calendar Year 1929 Cars Handled in Terminal Switching Service by it for the Account of Short Line Connections and also Cars Handled by Short Line Connections in Terminal Switching the Sou. Ry. System Service for Account

3	4	5	6	7	8	9
Mileage	Cars	Connections	Total Number Cars Handled by the Sou. Ry. in Terminal Switching Service and Delivered to and/or Received from Short Line	Total Number Cars Handled by the Short Line in Terminal Switching Service and Delivered to and/or Received from Sou. Ry.	Average Number Days Detention Per Car on the Sou. Ry. for Cars Reported Under Column 6	Average Number Days Detention Per Car Accruing on Short Line for Cars Reported in Column 7
14	None	2—A. C. L.–Sou.	19	185	2.00	2.00
75	56	4—A. C. L.–C. & W. C.–S. A. L.–Sou.	1078	476	3.65	2.70
59	1	5—A. C. L.–N. & W.–N. S.–S. A. L.–Sou.	2921	158	3.05	2.77
25	None	3—E. & O. V.–I. C.–Sou.	....	502	....	4.50
91	132	6—So. Ry. and 5 other railroads	278	131	3.00	3.00
36	8	2—Clinchfield–Sou.	231	1776	3.55	2.54
41	None	3—C. N. O. & T. P.–Sou.–L. & N.	249	51	4.00	4.00
30	2	2—G. M. & N.–Sou.	13	....	4.00	....
74	4	6—Sou. & 5 other railroads	103	501	3.51	4.00
51	None	3—A. C. L.–G. N.–Sou.	....	77	....	4.00
36	12	6—Sou. & 5 other railroads	140	....	3.21	....
35	32	3—H. P. R. A. & S.–Sou.–W. S. S.	7866	1593	4.00	4.00
79	3217	5—Clinchfield–L. & N.–N. & W.–N. & N.–Sou.	1854	179	2.00	4.00
29	None	3—C. & N.–S. A. L.–Sou.	22	369	4.00	4.00
65	None	12—Sou. and 11 other railroads	545	179	3.19	3.00
70	73	2—G. & S. I.–Sou.	16	807	3.00	3.00
92	None	7—Sou. & 6 other railroads	1046	1254	3.00	2.75
30	10	1—Sou.	22	....	1.50	....
82	14	5—A. C. L.–G. & F.–G. S. & F.–L. O. P. & G.–S. A. L.	2	5	4.00	4.00
14	493	27—Sou. and 26 other railroads	17	48	3.61	3.77
21	567	28—Sou. and 27 other railroads	65	48	3.61	2.63
38	29	4—B. & V. S.–C. & O.–R. F. & P.–Sou.	58	....	4.00	....
94	191	7—Sou. & 6 other railroads	5017	2970	2.11	2.93
13	None	3—I. C.–S. L. S. F.–Sou.	....	5	....	2.00
20	None	2—S. A. L.–Sou.	436	316	4.00	4.00
23	None	3—C. & W. C.–P. & N.–Sou.	....	24	....	4.00
34	None	2—M. & O.–Sou.	25	....	2.00	....
45	None	1—Sou.	265	....	1.70	....
		Totals	22288	11654		

Interchange Service.

[fols. 1077 & 1078] IN UNITED STATES DISTRICT COURT

In Equity. No. 10034

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY et al., Petitioners,

vs.

THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed Jan. 16, 1931

The above entitled suit coming on to be heard, and the Court having heard the evidence and argument of counsel, and briefs having been filed, and the Court being advised in the premises, now finds as

Findings of Fact

(1) That this suit was brought to set aside, suspend, annul and enjoin an order of the Interstate Commerce Commission, dated July 15, 1930; that such order dealt with the general subject of daily car rental and switching charges.

(2) The Court finds that on January 4, 1926 the Interstate Commerce Commission, on its own motion, instituted a general investigation of the rules governing car hire settlements between common carriers by railroads; that all such common carriers in the United States were respondents in said proceeding; that the Commission held hearings and took testimony; that on January 7, 1930, said Commission filed a report in which were incorporated findings; that thereafter and on July 15, 1930, the said Commission entered an order effective October 1, 1930; that the effective date of said order has been extended pending the hearing of this suit.

(3) That each of the petitioners is a railroad corporation and a common carrier for hire and owns and operates [fol. 1079] more than 100 miles of railroad and owns a large number of freight cars and is a Class I carrier as classified by the Interstate Commerce Commission and a member of the American Railway Association.

(4) The American Railway Association is a voluntary association of railroads, whose members include all of the Class I railroads in the United States; that such railroads represent about 98% of the railroad mileage and own over 99% of the railroad freight car equipment.

(5) The findings of the Commission are as follows:

"1. Common-carrier railroads, whether subscribers to the per diem agreement of the American Railway Association or nonsubscribers, are entitled to receive reasonable compensation in the form of a daily rental for the use of their general-service freight cars when on foreign lines, and that the present per diem charge of $1 per car day reasonably compensates car owners for average car ownership and maintenance costs. The reasonableness of this per diem rate is not questioned.

"2. The per diem rules are unreasonable to the extent that they do not authorise payment of the same daily rental of $1 per car day to common-carrier non-subscribers as to subscribers for the use of general-service freight cars.

"3. Per diem rule 5 is unreasonable to extent it prohibits car-hire allowances to nonsubscribers which perform terminal switching, as the latter term is defined by the switching-reclaim rules of the American Railway Association, and should be so amended as to provide for similar reclaim allowances to nonsubscribers as to subscriber lines.

"4. Paragraph (b) of per diem rule 6, which pertains to car-hire settlements with nonsubscribers, is unreasonable and should be so amended as to direct subscribers to make settlements with non-subscribers in conformity with our findings herein.

"5. It is uneconomical and unreasonable to require short-line carriers which return railroad-owned equipment to the road from which received to report per diem accruals to numerous car owners throughout the country. Such lines [fol. 1080] should be attached to their connecting carriers for purpose of car-hire settlement.

"6. For the future it will be reasonable for common-carrier railroads which interchange freight cars with more than one subscriber railroad, and which deliver to one or

more subscribing carriers, cars which are received from another such carrier, to make car-hire settlements direct with car owners in accordance with the per diem rules, and for railroads 100 miles or more in length, regardless of the number of railroads with which they connect, to so report per diem to car owners.

"7. For the future it will be reasonable for common-carrier railroads outside switching districts, other than those referred to in finding 6 to pay per diem to connecting carriers on railroad-owned cars after deducting an average of two days' free time per loaded freight car interchanged, settlements to be made at the end of each calendar month, except that no car hire should be paid for cars received for return coal loading from coal mines."

(6) The order of the Commission is as follows:

"It is ordered, That respondents herein, as shown in the appendix hereto and made a part hereof, be, and they are hereby, notified and required to cease and desist, on or before October 1, 1930, and thereafter to abstain, from applying rules for car-hire settlements which are in conflict with those prescribed for future application in the next succeeding paragraphs.

"It is further ordered, That the said respondents herein be, and they are hereby, notified and required to establish, on or before October 1, 1930, and thereafter to maintain and observe, rules with respect to car-hire settlements which shall provide:

(1) That the same daily car rental shall be paid to common-carrier nonsubscribers as respondents contemporaneously pay to subscribers to the per diem rules agreement of the American Railway Association, for the use of general-service freight cars.

(2) That similar reclaim allowances shall be made to nonsubscribers as to subscribers of the per diem rules agreement, in connection with cars handled in terminal switching service, as the latter term is defined by the switching reclaim rules of the American Railway Association.

(3) That short-line railroads which are less than 100 miles in length, and which return railroad-owned equip-

[fol. 1081] ment to the road from which received, shall not be required to report per diem accruals to numerous car owners throughout the country, but shall be attached to their connecting carriers for purpose of car-hire settlement.

(4) That common-carrier railroads which interchange freight cars with more than one subscriber railroad, and which deliver to one or more subscribing carriers, freight cars which are received from another such carrier, and railroads 100 miles or more in length, regardless of the number of railroads with which they connect, shall make car-hire settlements direct with car owners in accordance with the per diem rules.

(5) That common-carrier railroads outside switching districts, other than those referred to in paragraph 4 hereof, shall pay per diem to connecting carriers on railroad-owned freight cars after deducting an average of two days free time per loaded freight car interchanged, settlements to be made at the end of each calendar month, except that no car hire need be paid on cars received for return loading with coal from coal mines which are customarily dependent upon connecting carriers for car supply.

"It is further ordered, That this order shall continue in effect until the further order of the Commission."

(7) The Court finds that the Commission set forth in its report, dated January 7, 1929, a statement of the evidence introduced before it, which fully covers the controverted issues.

(8) The Court finds that the evidence supports each finding of the Commission.

(9) The Court further finds that the evidence justified a classification for purposes of determining car rentals and car hire settlements of railroads into classes: (a) Railroads whose mileages exceeds 100 miles, and (b) railroads whose mileage is less than 100 miles.

(10) The Court finds a basis in fact for relieving railroads receiving cars for rent to be used in loading with [fol. 1082] coal from coal mines, which are customarily dependent upon connecting carriers for car supply, from paying car rental.

(11) The Court further finds that there is a fact basis for the exceptions appearing in paragraph 5 of the order of the Commission, as above quoted.

(12) The Court finds that the provision which fixes the same daily car rental for nonsubscribers of the American Railway Association as is charged to members of such association is not unreasonable or discriminatory.

(13) The Court further finds that the provision exempting railroads which are less than 100 miles in length from the requirement to report per diem accruals to the car owners throughout the country is not unreasonable or discriminatory.

(14) The Court adopts the findings of the Commission, above quoted, as its own.

Conclusions of Law

(1) The Court finds that the Interstate Commerce Commission had jurisdiction to institute the proceedings on its own initiative and to enter the order complained of.

(2) The Court finds that the order complained of was not unreasonable, discriminatory or confiscatory.

(3) The Court finds that the order of the Commission should be confirmed.

(4) The Court finds that the petition should be dismissed but without prejudice to petitioners to apply to the Commission at any time for a modification of the order when and if experience demonstrates that such order is working [fols. 1083 & 1084] an injury to petitioners, or any of them, or unfair results are following its application.

Dated January 14th, 1931.

(Signed) Evan A. Evans, Circuit Judge. (Signed) Carpenter, (Signed) Charles E. Woodward, District Judges.

[fols. 1085 & 1086] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Equity. No. 10034

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY et al., Petitioners,

v.

THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

FINAL DECREE—Jan. 29, 1931

This cause came on to be heard upon final hearing for a permanent injunction, before a statutory court, as provided by statute; upon the pleadings and evidence and was argued by counsel, and thereupon, and upon consideration thereof, it is Ordered, Adjudged and Decreed

That the petition be and the same hereby is dismissed at petitioners' cost; said dismissal to be without prejudice to petitioners to apply to the Interstate Commerce Commission at any time for a modification of the order of the Commission, entered July 15, 1930, in Docket No. 17801, Rules for Car Hire Settlement, when and if experience demonstrates that such order is working an injury to petitioners or any of them or unfair results are following its application.

Dated this 29th day of January, 1931.

Evan A. Evans, United States Circuit Judge, 7th Circuit. Carpenter, United States District Judge, Northern District of Illinois. Charles E. Woodward, United States District Judge, Northern District of Illinois.

O. K.

H. L. Underwood. R. E. Quirk. Elmer B. Collins. F. H. Towner.

[fol. 1087] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL—Filed Jan. 29, 1931

To Elmer B. Collins, H. L. Underwood, Robert E. Quirk, Solicitors for Defendants; Oscar E. Carlstrom, Attorney General, State of Illinois:

You and each of you are hereby notified that on the 29th day of January, 1931, at 10 o'clock A. M., or as soon thereafter as counsel can be heard, we shall present to the Honorable Evan A. Evans, United States Circuit Judge, and the Honorable George A. Carpenter and Charles E. Woodward, Untied States District Judges, the petition of petitioners herein for an appeal from the final order or decree made and entered in the District Court in the above entitled cause on the 29th of January, 1931, to the Supreme Court of the United States, a copy of said petition for appeal and assignment of errors therein referred to being attached hereto, and ask that an order be entered herein allowing said appeal and making same returnable within thirty (30) days from January 29th, 1931, a copy of said [fols. 1088 & 1089] order being also attached hereto.

Alfred P. Thom, Frank H. Towner, Solicitors for Petitioners.

Received a copy of the foregoing notice, together with a copy of the petition for appeal, assignment of errors and order therein referred to, this 19th day of January, 1931.

Elmer B. Collins, Solicitor for United States of America. H. L. Underwood, Solicitor for Interstate Commerce Commission. Oscar E. Carlstrom, Attorney General of the State of Illinois. Robert E. Quirk, Solicitor for South Manchester Railroad Company, Intervening Defendant.

[fol. 1090] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed Jan. 29, 1931

To the Honorable Evan A. Evans, United States Circuit Judge, and the Honorable George A. Carpenter and the Honorable Charles E. Woodward, United States District Judges:

Now come the Chicago, Rock Island & Pacific Railway Company, Chicago & North Western Railway Company, Illinois Central Railroad Company, The Chesapeake & Ohio Railway Company, Erie Railroad Company, The New York Central Railroad Company, The Pennsylvania Railroad Company, Southern Pacific Company, Atlantic Coast Line Railroad Company, Louisville & Nashville Railroad Company, Seaboard Air Line Railway Company, and Southern Railway Company, petitioners herein, by their solicitors, and feeling aggrieved by the final order or decree of the District Court made and entered herein on, to-wit, January 29th, 1931, do hereby appeal therefrom to the Supreme Court of the United States, and they pray that their appeal be allowed and that citation be issued as provided by law.

The particulars wherein they consider the final order or decree erroneous are set forth in the assignment of errors on file, to which reference is made. They pray that a transcript of the record, proceedings and papers on which the final order or decree was made and entered, duly authenti- [fols. 1091 & 1092] cated, may be transmitted to the Supreme Court of the United States, and they further pray that the proper order relating to the security to be required of them be made.

Alfred P. Thom, Frank H. Towner, Solicitors for Petitioners.

[fol. 1093] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Jan. 29, 1931

Now come The Chicago Rock Island & Pacific Railway Company, Chicago & North Western Railway Company, Illinois Central Railroad Company, The Chesapeake & Ohio

Railway Company, Erie Railroad Company, The New York Central Railroad Company, The Pennsylvania Railroad Company, Southern Pacific Company, Atlantic Coast Line Railroad Company, Louisville & Nashville Railroad Company, Seaboard Air Line Railway Company, and Southern Railway Company, Petitioners herein, and present with their petition for appeal herein this assignment of errors, and say that in the record and proceedings in the above entitled cause, and the decree made and entered against them therein on the 29th day of January, 1931, there is error in the particulars hereinafter set forth.

The District Court for the Northern District of Illinois, Eastern Division, erred in making the decree and in dismissing the petition herein, in the following respects:

[fol. 1094] (1) It erred in finding that the order of the Interstate Commerce Commission dated July 15, 1930 dealt with the subject of switching charges.

(2) It erred in finding that the statement of the evidence introduced before the Commission, as contained in the Commission's report dated January 7, 1929, fully covers the controverted issues.

(3) It erred in finding that the evidence fully supported each finding of said Commission.

(4) It erred in finding that the evidence justified a classification, for the purpose of determining car rentals and car-hire settlements of railroads into classes consisting of railroads whose mileage exceeds 100 miles and railroads whose mileage is less than 100 miles.

(5) It erred in finding a basis in fact for relieving railroads receiving cars to be used in loading with coal at coal mines which are customarily dependent upon connecting carriers for car supply, from paying car rentals.

(6) It erred in finding that there is a fact basis for the exceptions appearing in paragraph 5 of the order of said Commission.

(7) It erred in finding that the provision of said order exempting railroads less than 100 miles in length from the requirement to report per diem accruals to car owners throughout the country was not unreasonable or discriminatory.

sel for petitioners, and filed their assignment of errors and petition for appeal, and it is hereby

Ordered, that an appeal by the petitioners in the above entitled cause to the Supreme Court of the United States from the decree heretofore filed and entered herein on January 29th, 1931, be and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to the Supreme Court of the United States, said appeal being hereby made returnable thirty (30) days from the date hereof.

It is further ordered, that the bond on appeal be and the same is hereby fixed at the sum of One Thousand Dollars ($1000/00).

Dated January 29th, 1931.

Evans A. Evans, United States Circuit Judge. Carpenter, Charles E. Woodward, United States District Judges.

[fols. 1100-1103] Bond on appeal for $1,000.00, approved and filed February 10, 1931, omitted in printing.

[fols. 1104 & 1105] In United States District Court

[Title omitted]

Order Extending Time—Feb. 10, 1931

It appearing to the court that the return day of the appeal allowed plaintiffs herein to the Supreme Court of the United States is February 28, 1931, and good cause being shown, upon application of petitioners and appellants, it is

Ordered that the time in which to file the transcript of the record in the above cause in the Supreme Court of the United States and to docket the said cause therein is hereby extended up to and including April 1, 1931.

Evan A. Evans, United States Circuit Judge. Carpenter, Charles E. Woodward, United States District Judges.

Dated February 10th, 1931.

O. K.

H. L. Underwood, Elmer B. Collins, Robert E. Quirk.

[fols. 1106 & 1107] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME—Mar. 26, 1931

It appearing to the court that the return day of the appeal allowed plaintiffs (appellants) herein to the Supreme Court of the United States was February 28, 1931, and it further appearing to the court that this court did by its order dated February 10, 1931 enlarge to and including April 1, 1931 the time allowed to plaintiffs (appellants) in which to file the transcript of the record in the above cause in the Supreme Court of the United States and to docket the said cause therein, and good cause being shown, upon application of plaintiffs (appellants),

It is ordered that the time in which to file the transcript of the record in the above cause in the Supreme Court of the United States, and to docket the said cause therein, is hereby extended up to and including May 15, 1931.

Evan A. Evans, United States Circuit Judge.
Charles E. Woodward, United States District Judge.

Dated March 26th, 1931.

O. K. H. L. Underwood, for I. C. C.
O. K. Elmer Collins, for United States. Robert E. Quirk.

[fol. 1108] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF LODGMENT—Filed May 4, 1931

To United States of America, Interstate Commerce Commission, Defendants; Attorney General of the State of Illinois; South Manchester Railroad Company, Intervening Defendant:

Please take notice that the Plaintiffs (Appellants) in the above cause have lodged in the Clerk's office of the United States District Court for the Northern District of Illinois, Eastern Division, at Chicago, Illinois, for the examination

of the parties hereto, the narrative statement of evidence to be included in the transcript of record on appeal to the Supreme Court of the United States from the final decree entered in the above proceeding on January 14, 1931.

Further please take notice that on Monday, the 4th day of May, 1931, at 10 o'clock A. M., at the Court room of said United States District Court, in Chicago, Illinois, appellants will move the court to enter an order approving said narrative statement of evidence and providing for the certification to the Supreme Court of the United States of the exhibits filed upon the trial of said cause in said District Court, said exhibits to be certified and forwarded by the Clerk of the District Court to the Supreme Court of the United [fols. 1109 & 1110] States as original exhibits, not as part of the transcript of record but separately therefrom; a copy of said order being served upon you herewith.

Alfred P. Thom, Frank H. Towner, Counsel for Plaintiffs.

Received a copy of the foregoing notice and order therein referred to this 27th day of April, 1931.

Elmer B. Collins, Counsel for United States of America. H. L. Underwood, Counsel for Interstate Commerce Commission. Oscar E. Carlstrom, Attorney General of the State of Illinois. R. E. Quirk, Counsel for South Manchester Railroad Company, Intervener.

[fol. 1111] In United States District Court

[Title omitted]

Order Approving Statement of Evidence—May 4, 1931

This cause coming on for hearing on the motion of plaintiffs (appellants) for an order approving the narrative statement of evidence filed herein, and an order to certify original exhibits to the Supreme Court of the United States, and the Court being fully advised in the premises,

It is ordered,

1. That the narrative statement of evidence filed herein, and which, with the original exhibits offered in evidence

and to be certified separately to the Supreme Court of the United States, is a true and complete statement of all the evidence introduced in this cause and comprises all the evidence offered and received on the trial hereof, be and it is hereby approved.

2. That the Clerk of this Court, in preparing the transcript of the record on the appeal herein to the Supreme Court of the United States, shall certify to said Court the original exhibits introduced in evidence on the trial of this cause in this Court and identified as Petitioners' Exhibits 2 to 40, inclusive, and also all the exhibits and other documents which were attached to Petitioners' Exhibit 1, introduced in evidence on the trial of this cause in this Court, the said exhibits so attached to Petitioners' Exhibit 1 being marked Exhibits 1 to 530 inclusive; but shall not include the [fols. 1112 & 1113] transcript of oral testimony included in said Petitioners' Exhibit 1, for the reason that said testimony has been reduced to narrative form and is being certified and forwarded in the transcript of record; that said exhibits shall be certified and forwarded by the Clerk of this Court to the Supreme Court of the United States as original exhibits, not as part of the transcript of record, but separately therefrom, and that any party hereto may refer to said original exhibits in their briefs and arguments with like effect as though they were printed as part of the record.

Evan A. Evans, Judge United States Circuit Court.
Carpenter, Charles E. Woodward, Judges United States District Court.

Dated May 4th, 1931.
OK. Elmer B. Collins, for United States.
OK. H. L. Underwood, for I. C. C.
OK. R. E. Quirk.

[fol. 1114] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE TRANSCRIPT OF RECORD—Filed May 4, 1931

It is hereby stipulated by and between the parties hereto, by their respective counsel, for the purpose of settling the

record herein on appeal to the Supreme Court of the United States,

(1) That the narrative statement of evidence filed herein is a true and correct statement in narrative form of the proceedings had and of the oral testimony introduced on the trial of the above cause, and includes a true and correct statement in narrative form of the oral testimony taken by the Interstate Commerce Commission in the proceedings before it known as its Docket No. 17801, Rules for Car Hire Settlement, the entire record in said proceedings before said Commission having been introduced in evidence in this cause as Exhibit No. 1; and also includes a true and correct statement in narrative form of the oral testimony taken by the Interstate Commerce Commission in the proceedings before it known as its Docket No. 16420, South Manchester Railroad Company v. New York, New Haven & Hartford Railroad Company, the entire record in said proceedings before said Commission in said cause having been introduced in evidence in this cause as Exhibit No. 18.

(2) That the narrative statement of evidence filed herein, which includes a narrative statement of the oral testimony [fol. 1115] taken by the Interstate Commerce Commission in the proceedings before it known as its Docket No. 17801, Rules for Car Hire Settlement, and its Docket No. 16420, South Manchester Railroad Company v. New York, New Haven & Hartford Railroad Company, sets forth in condensed form all oral testimony offered on the trial hereof which is essential to the decision of the questions presented by the appeal.

(3) That the Clerk of this Court, in preparing the transcript of the record on appeal in the above entitled cause to the Supreme Court of the United States shall certify to said Court the original exhibits introduced in evidence on the trial of said cause and identified as Petitioner's Exhibits 2 to 40, inclusive, and also all the exhibits and other documents which were attached to Petitioners' Exhibit 1, introduced in evidence on the trial of said cause, the said exhibits so attached to Petitioner's Exhibit 1 being marked Exhibits 1 to 531, inclusive; but shall not include the transcript of oral testimony included in said Petitioners' Exhibit 1, for the reason that said testimony has been reduced

to narrative form and is being certified and forwarded in the transcript of the record; that said exhibits shall be certified and forwarded by the Clerk of this Court to the Supreme Court of the United States as original exhibits, not as part of the transcript of record but separately therefrom, and that any party hereto may refer to said original exhibits in their briefs and arguments with like effect as though they were printed as part of the record.

Elmer B. Collins, Counsel for United States. H. L. Underwood, Counsel for Interstate Commerce Commission. R. E. Quirk, Counsel for South Manchester Railroad Company, Intervener. A. P. Thom, Frank H. Towner, Counsel for Petitioners (Appellants).

[fol. 1116] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed May 4, 1931

To the Honorable Charles M. Bates, Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division:

Please prepare a transcript of record in the above entitled cause on appeal to the Supreme Court of the United States, containing the following:

(1) Bill of complaint or petition, which should include Appendix A thereto, being the report of the Interstate Commerce Commission dated January 7, 1930, entered in the proceeding before it known as its Docket No. 17801, Rules for Car Hire Settlement; and including also Appendix B thereto, being the supplemental report and order of the Interstate Commerce Commission dated July 15, 1930 in the same case before it.

(2) Answer of the United States of America.

(3) Answer of the Interstate Commerce Commission.

(4) Motion for an order setting said cause for hearing and order entered thereon dated October 22, 1930.

(5) Petition of South Manchester Railroad Company for

leave to intervene as a party defendant in said cause and file pleadings.

(5a) Order permitting intervention of South Manchester Railroad Company.

(6) Answer of South Manchester Railroad Company.

(7) Narrative statement of evidence.

(8) Opinion of the court.

[fol. 1117] (9) Final decree.

(10) Notice of application for order allowing appeal.

(11) Order allowing appeal.

(12 Assignment of errors.

(13) Citation on appeal.

(14) Bond on appeal.

(15) Orders dated February 10, 1931 and March 26, 1931, extending the time within which the case may be docketed in the Supreme Court of the United States.

(16) Notice of lodgement in Clerk's office of narrative statement of evidence to be included in the transcript of record on appeal, together with notice of application for an order approving said narrative statement of evidence and providing for the certification of original exhibits to the Supreme Court.

(17) Order approving the narrative statement of evidence and providing for the certification to the Supreme Court of original exhibits.

(18) Stipulation with respect to narrative statement of evidence and certification of original exhibits to the Supreme Court.

(19) Præcipe.

Alfred P. Thom, Frank H. Towner, Counsel for Plaintiffs (Appellants).

Service of the foregoing præcipe for record and receipt of a copy thereof are hereby admitted and acknowledged upon the dates respectively set opposite our names.

United States of America, by Elmer B. Collins, Apr. 29, 1931. Interstate Commerce Commission., by H. L. Underwood, May 1, 1931. Oscar E. Carlstrom, Attorney General of Illinois, May 1, 1931. South Manchester Railroad Company, by R. E. Quirk, May 1, 1931.

[File endorsement omitted.]

[fol. 1118] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 1119-1122] Citation, in usual form, showing service on Elmer B. Collins et al., filed February 7, 1931, omitted in printing.

[fol. 1123] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed May 7, 1931

Now come appellants in the above entitled cause, by Alfred P. Thom and Frank H. Towner, their solicitors, and file this their statement of the points upon which appellants intend to rely and of the parts of the record which they think necessary for the consideration thereof, to-[fol. 1124] gether with proof of service of the same upon appellees.

Statement of Points to be Relied Upon by Appellants

(1) The Interstate Commerce Commission did not have power and jurisdiction to make the requirements contained in Paragraphs 2, 3 and 5 of its order of July 15, 1930.

(2) Paragraphs 2, 3 and 5 of said order of the Interstate Commerce Commission of July 15, 1930, went beyond the power and jurisdiction of said Commission and operate to deprive appellants of their property without due process of law and without compensation, in violation of their rights under the Fifth Amendment to the Constitution.

(3) The evidence before the Interstate Commerce Commission was insufficient to support the requirements of Paragraphs 2, 3 and 5 of its said order of July 15, 1930.

(4) The classifications created by Paragraphs 2, 3 and 5 of said order of the Interstate Commerce Commission of July 15, 1930, are arbitrary, unreasonable and illogical,

and are not supported by any evidence in the record of the proceedings before said Commission and are, therefore, void.

(5) That the District Court was in error in finding that the statement of the evidence introduced before the Interstate Commerce Commission, as contained in its report of January 7, 1929, fully covered the controverted issues, and erred in finding that such evidence fully supported each finding of said Commission.

(6) The District Court was in error in finding that the evidence introduced in the proceedings before the Interstate Commerce Commission justified a classification for the purpose of determining car rentals and car hire settlements of railroads into classes consisting of railroads whose mileage exceeds 100 miles and railroads whose mileage is less than 100 miles, and in finding that there was [fol. 1125] a basis in effect for relieving railroads receiving cars to be used in loading with coal at coal mines which are customarily dependent upon connecting carriers for car supply from paying car rentals.

(7) The District Court was in error in finding that there is a fact basis for the exceptions appearing in Paragraph 5 of the order of the Interstate Commerce Commission of July 15, 1930, and in finding that the provision of said order exempting railroads less than 100 miles in length from the requirement to report per diem accruals to car owners throughout the country was not unreasonable or discriminatory.

(8) The District Court was in error in adopting the findings of the Interstate Commerce Commission as its own; in finding that the said Commission had jurisdiction to make the order of July 15, 1930; and in finding that Paragraphs 2, 3 and 5 of said order were not unreasonable, discriminatory or confiscatory.

(9) The District Court was in error in failing to set aside and annul Paragraphs 2, 3 and 5 of the order of the Interstate Commerce Commission of July 15, 1930, and in failing to permanently enjoin the enforcement of said paragraphs of said order.

(10) The District Court was in error in dismissing the petition of appellants and in denying their application for an injunction.

Designation of Parts of Record to be Printed

Appellants hereby designate for printing the entire transcript of the record, which they think necessary for consideration in determining the appeal herein, but not including the original exhibits which have been certified to this court separately and not as part of said transcript of record.

Alfred P. Thom, Frank H. Towner, Solicitors for Appellants.

[fols. 1126 & 1127] Service of the foregoing statement of points to be relied upon by appellants upon the appeal herein, and designation of parts of the record to be printed, and receipt of a copy hereof, are hereby admitted and acknowledged by the following:

United States of America, by Thomas D. Thacher, Solicitor General, per W. M. S., by Elmer B. Collins, this 6th day of May, 1931. Interstate Commerce Commission, by H. L. Underwood, this 6th day of May, 1931. South Manchester Railroad Company, by Robert E. Quirk, this 7th day of May, 1931.

[fol. 1128] [File endorsement omitted.]

Endorsed on cover: File No. 35,865. N. Illinois D. C. U. S. Term No. 69. The Chicago, Rock Island and Pacific Railway Company, Chicago and North Western Railway Company, Illinois Central Railroad Company et al., appellants, vs. the United States of America, Interstate Commerce Commission, et al. Filed May 7, 1931. File No. 35,865.

(8) It erred in adopting the said findings of the said Commission as its own.

(9) It erred in finding that the said Commission had jurisdiction to enter the order complained of.

(10) It erred in finding that the order complained of was not unreasonable, discriminatory or confiscatory.

(11) It erred in failing to set aside and annul paragraphs numbered 2, 3 and 5 of the order of the Interstate Commerce Commission entered July 15, 1930, in the proceeding before [fol. 1095] it known as "Docket 17801, Rules for Car-Hire Settlement."

(12) It erred in failing to issue a permanent injunction suspending, restraining and enjoining paragraphs 2, 3 and 5 of the said order and enjoining the enforcement of said paragraphs of said order.

(13) It erred in failing to find, as it should have done, that paragraphs 2, 3 and 5 of said order operated to confiscate the property of petitioners and other carriers similarly situated and deprive them of their property without due process of law and without compensation, in violation of the provisions of the Fifth Amendment to the Constitution of the United States.

(14) It erred in failing to find, as it should have done, that the Interstate Commerce Commmission did not have power and jurisdiction to make the requirements contained in paragraphs 2, 3 and 5 of said order.

(15) It erred in failing to find, as it should have done, that the provisions of said order which require petitioners to pay the car accounting and car hire expenses of other common carriers and which permit and require the use of petitioner's freight cars by other common carriers without the payment of any compensation or inadequate compensation, to petitioners, were beyond the power and jurisdiction of the Interstate Commerce Commission and operated to confiscate the property of petitioners and deprive them of their property without due process and without compensation, in violation of their rights under the Fifth Amendment to the Constitution.

(16) It erred in failing to find, as it should have done, that the evidence before the said Commission was insufficient to support the requirements of paragraphs 2, 3 and 5 of the said order.

(17) It erred in failing to find, as it should have done, that the classification created by the said order was arbitrary, unreasonable and illogical and was not supported by any evidence in the record of the proceedings before the said Commission.

(18) It erred in dismissing the petition of plaintiffs and in denying their application for an injunction.

[fols. 1096 & 1097] Wherefore the petitioners above named and each of them pray that the said decree, entered herein on the 29th day of January, 1931, be reversed and that the said District Court of the United States for the Northern District of Illinois, Eastern Division, be ordered to enter a decree with direction that the said petition of the petitioners be granted, and that said order of the Interstate Commerce Commission, in so far as it is complained of in said petition, be declared void and perpetually set aside, suspended and annulled, and that your petitioners may have such other and further relief as may be appropriate.

The Chicago Rock Island & Pacific Railway Company, Chicago & North Western Railway Company, Illinois Central Railroad Company, The Chesapeake & Ohio Railway Company, Erie Railroad Company, The New York Central Railroad Company, The Pennsylvania Railroad Company, Southern Pacific Company, Atlantic Coast Line Railroad Company, Louisville & Nashville Railroad Company, Seaboard Air Line Railway Company, and Southern Railway Company, by Alfred P. Thom, Frank H. Towner, Solicitors for said Petitioners.

[fols. 1098 & 1099] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Jan. 29, 1931

Upon the entering of the final decree in this cause came Alfred P. Thom and Frank H. Towner, solicitors and coun-

FILE COPY

MAY 14 1
CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1930.

No. 69

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,

Appellants,

vs.

THE UNITED STATES OF AMERICA, *et al.*,

Appellees.

MOTION BY APPELLANTS TO ADVANCE.

ALFRED P. THOM,
W. F. DICKINSON,
R. N. VAN DOREN,
R. V. FLETCHER,
HERBERT FITZPATRICK,
GEORGE F. BROWNELL,
C. C. PAULDING,
C. B. HEISERMAN,
BEN C. DEY,
F. BARRON GRIER,
EDWARD S. JOUETT,
W. R. C. COCKE,
L. E. JEFFRIES,
FRANK H. TOWNER,
Solicitors for Appellants.

GUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1930.

No. 943

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL.,

Appellants,

vs.

THE UNITED STATES OF AMERICA, ET. AL.,

Appellees.

MOTION BY APPELLANTS TO ADVANCE.

Now come appellants in the above entitled cause and move that said cause be advanced for early hearing, and in support of their motion make the following statement of the matter involved and of the reasons supporting the motion.

The question involved in the case is the validity of Paragraphs numbered 2, 3 and 5 of an order entered by the Interstate Commerce Commission in a proceeding instituted by it on its own motion and designated as its Docket No. 17801, Rules for Car Hire Settlement, with which case the Commission had consolidated a number of other proceedings before it. The subject matter of the investigation before the Commission was the rules in effect between common carriers by rail in the United

States relating to the interchange and use by such carriers of freight cars not owned by them and the matter of the accounting and payment for their use of such cars. All common carriers by rail in the United States, including appellants, were named by the Commission as respondents in said proceedings, and the order of the Commission is directed to all such carriers. The order of the Commission required the promulgation by all such carriers including appellants, of certain rules with respect to the interchange and use by them of freight cars not owned by them and with respect to the accounting and payment for their use of such cars, and prohibited the application of any rules in conflict therewith.

Appellants were plaintiffs in the court below and brought the suit under the provisions of the Urgent Deficiencies Act of October 22, 1913 (38 Stat. at L., 219-220, U. S. C. A., Title 28, Sections 41 etc.) to enjoin, set aside, annul and suspend Paragraphs 2, 3 and 5 of said order. In their petition filed in the lower court, appellants sued on their own behalf and on behalf of all other carriers subject to the Interstate Commerce Act who might have an interest in the premises, and alleged that said paragraphs of the Commission's order were void because they operated to confiscate the property of appellants and other carriers similarly situated and deprive them of their property without due process of law and without compensation, contrary to the provisions of the Fifth Amendment to the Federal Constitution; because the classification of railroads created by the order was arbitrary, unreasonable and illogical and because the requirements of said paragraphs of the order were not supported by any evidence contained in the record of the proceedings before the Commission. The entire order is attached to said petition as Appendix B (Rec., 3).

The District Court denied all contentions of appellants

and made a decree dismissing their petition, from which decree appellants have taken this appeal to this Court. The case was docketed in this Court on May 7, 1931, and the jurisdictional statement for appellants was filed on the same date. The record in this Court has not yet been printed and all page references are to the pages of the original record.

The reasons why the said cause should be advanced for hearing are as follows:

The Urgent Deficiencies Act of October 22, 1913 (38 Stat. at L., 219-220) provides that the final judgment or decree of a District Court in such a case as this may be reviewed by the Supreme Court of the United States upon appeal, and that appeals in such cases shall have priority in hearing and determination in this Court over all other causes except criminal causes.

The order of the Interstate Commerce Commission was to become effective as of October 1, 1930. During the pendency of the litigation in the lower court the effective date of the order was extended to January 30, 1931, by which date the lower court had entered its decree dismissing the petition filed by appellants and sustaining the order of the Commission. The Commission thereafter declined to further extend the effective date of the order and appellants and all other carriers named therein were compelled to comply with its requirements on January 30, 1931, in order to avoid penalties.

Said order, is, therefore, now in effect and has been in effect since January 30, 1931. Under Paragraphs 2, 3 and 5 of said order, appellants and each of them are now expending large sums of money in the payment of expenses incurred by a designated class of common carriers because of the use by such carriers of freight cars belonging to other carriers; are losing large sums of

money through the use of their freight cars by such designated class of common carriers, without the payment by such carriers to appellants of any compensation whatsoever for such use, and are also expending large sums of money in performing the accounting work necessary to account for the use by a designated class of common carriers of freight cars not owned by them. Appellants and all other carriers have made these expenditures and sustained these losses since January 30, 1931, and will continue to sustain them as long as Paragraphs 2, 3 and 5 of said order remain in effect. It is impossible to state definitely the amount of the loss thus being sustained by appellants for the reason that under the terms of the order such amounts vary from time to time and will, of course, increase as time goes on. It may be said, however, that such loss thus imposed upon appellants and other carriers similarly situated, will aggregate some millions of dollars in each year.

If Paragraphs 2, 3 and 5 of said order of the Commission are ultimately held to be invalid by this Court, iti s improbable that the amounts expended by appellants and other carriers similarly situated, in complying with Paragraphs 2, 3 and 5 of said order during the pendency of this appeal, can be recovered, as a large part of the payments and allowances thus required to be made by appellants and other carriers similarly situated will be made to and on behalf of common carriers which are not financially responsible and from which recovery of such amounts cannot be made.

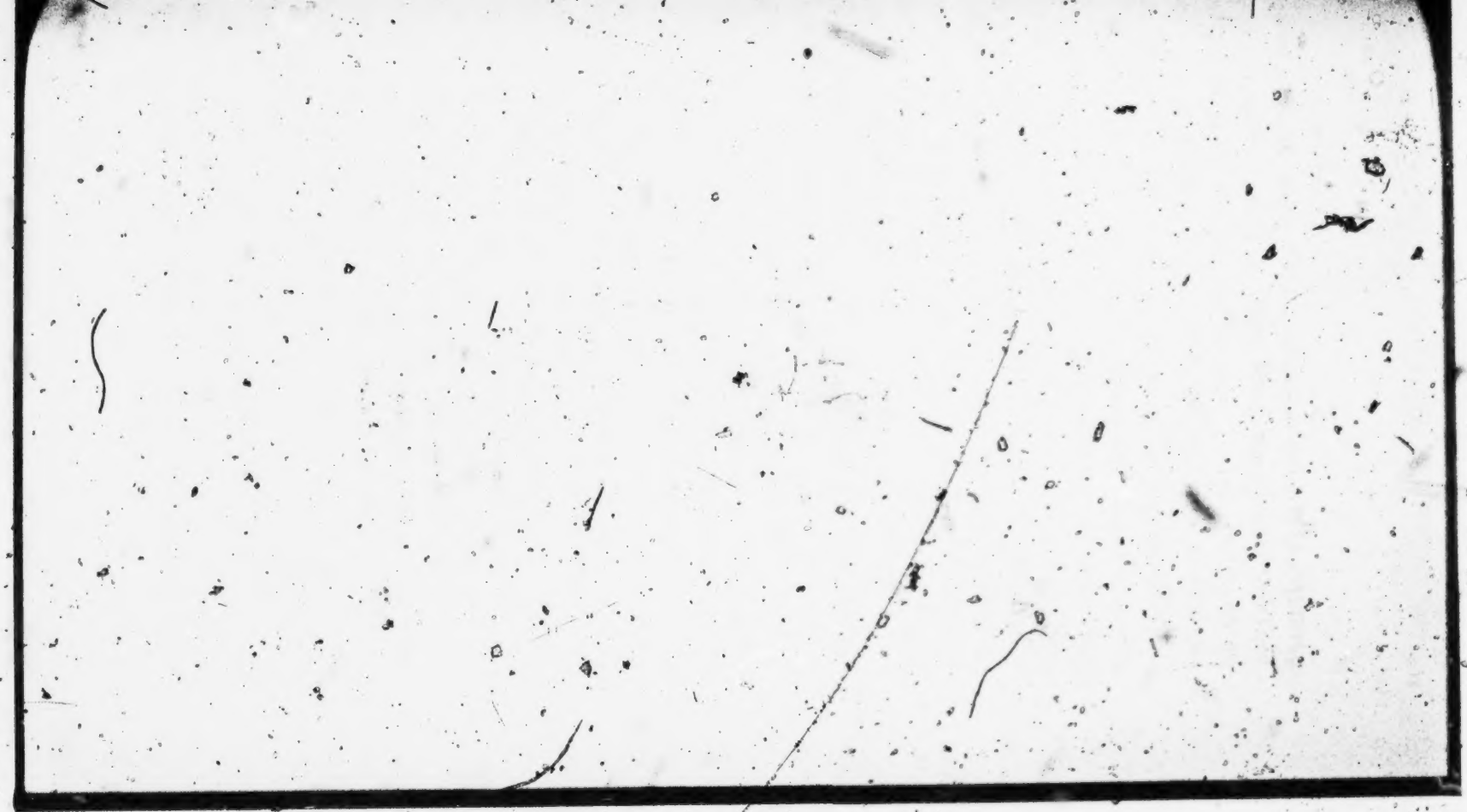
Furthermore, it is desirable that the propriety and validity of said paragraphs of the Commission's order be promptly determined as the subject is of major importance, involving large sums of money, and it is quite essential that each common carrier know as soon as pos-

sible the basis upon which freight cars owned by it are to be used by other common carriers.

WHEREFORE, appellants move that said cause be set down for argument at as early a date as is practical.

Respectfully submitted,

ALFRED P. THOM,
W. F. DICKINSON,
R. N. VAN DOREN,
R. V. FLETCHER,
HERBERT FITZPATRICK,
GEORGE F. BROWNELL,
C. C. PAULDING,
C. B. HEISERMAN,
BEN C. DEY,
F. BARRON GRIER,
EDWARD S. JOUETT,
W. R. C. COCKE,
L. E. JEFFRIES,
FRANK H. TOWNER,
Solicitors for Appellants.



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MAY

CHARLES EL

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1930.

No. [redacted] 69

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL.,

Appellants,

vs.

THE UNITED STATES OF AMERICA, ET AL.,

Appellees.

STATEMENT BY APPELLANTS OF BASIS ON WHICH COURT HAS JURISDICTION TO REVIEW DECREE ON APPEAL.

ALFRED P. THOM,
W. F. DICKINSON,
R. N. VAN DOREN,
R. V. FLETCHER,
HERBERT FITZPATRICK,
GEORGE F. BROWNELL,
C. C. PAULDING,
C. B. HEISERMAN,
BEN C. DEY,
F. BARRON GRIER,
EDWARD S. JOUETT,
W. R. C. COCKE,
L. E. JEFFRIES,
FRANK H. TOWNER,

Solicitors for Appellants.

GIBBONS-BRADEN PRINTING COMPANY, CHICAGO.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1930.

No. .....

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL.,

Appellants,

vs.

THE UNITED STATES OF AMERICA, ET AL.,

Appellees.

STATEMENT BY APPELLANTS OF BASIS ON WHICH COURT HAS JURISDICTION TO REVIEW DECREE ON APPEAL.

MAY IT PLEASE THE COURT:

In this suit, appellants sought to enjoin, annul, suspend and set aside certain paragraphs of an order of the Interstate Commerce Commission made on July 15, 1930, in a proceeding instituted by the Commission on its own motion and known as its Docket No. 17801, Rules for Car Hire Settlement. The order was directed to all common carriers by rail in the United States.

The suit was heard in the District Court by a three-judge court, convened pursuant to the Act of Congress

of October 22, 1913 (38 Stat. L. 220, Title 28, U. S. C. A., Sec. 47). On January 29, 1931, a final decree was made by the court dismissing the petition of appellants and sustaining the order of the Commission. This appeal is prosecuted from that decree.

(1) The jurisdiction of this court to review said decree on appeal is sustained by the following statutory provisions. The Urgent Deficiencies Act of October 22, 1913 (38 Stat. L. 219-220) confers upon the District Courts of the United States the jurisdiction theretofore vested in the Commerce Court, including jurisdiction over all suits brought to enjoin, suspend, annul, or set aside any order of the Interstate Commerce Commission. The same act provides, with reference to an appeal from the final decree of a District Court in such action, as follows:

> "A final judgment or decree of the District Court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases." (38 Stat. L. 220; Title 28, U. S. C. A., Sec. 47.)

By the Act of February 13, 1925, entitled "An act to amend the Judicial Code and to further define the jurisdiction of the Circuit Courts of Appeals and of the Supreme Court, and for Other Purposes," Section 238 of the Judicial Code was amended to provide:

> "A direct review by the Supreme Court of an interlocutory or final judgment or decree of a District Court may be had where it is so provided in the following Acts or parts of Acts, and not otherwise:
>
> * * * * * * *
>
> (4) So much of 'An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year 1913, and for other purposes,' ap-

proved October 22, 1913, as relates to the review of interlocutory and final judgments and decrees in suits to enforce, suspend or set aside orders of the Interstate Commerce Commission other than for the payment of money." (43 Stat. at L., 938; Judicial Code, Sec. 238; Title 28, U. S. C. A., Sec. 345.)

(2). The decree sought to be reviewed upon this appeal was made and entered on January 29, 1931. (Rec. 1085.)* The petition for appeal herein (Rec., 1090), together with an assignment of errors (Rec., 1093 was presented, and the order allowing the appeal was entered, on January 29, 1931. (Rec., 1098.) The appeal bond was approved and filed on February 10, 1931. (Rec., 1100.) The citation was issued on January 29, 1931, and after due service, was filed on February 7, 1931. (Rec., 1119.) The time for completing the transcript and docketing the case in this court was extended by the lower court from February 28, 1931, to April 1, 1931, by order entered on February 10, 1931 (Rec., 1104), and was further extended to May 15, 1931, by order entered on March 26, 1931. (Rec., 1106.) The cause was docketed in this court on May 7, 1931.

(3) This suit was instituted by appellants for the purpose of enjoining, annulling, suspending and setting aside paragraphs 2, 3 and 5 of an order of the Interstate Commerce Commission made on July 15, 1930, in a proceeding pending before the Commission and known as its Docket No. 17801, Rules for Car Hire Settlement, with which case a number of other proceedings before the Commission had been consolidated. The subject matter of the investigation was the rules in effect between common carriers by rail in the United States, relating to the interchange and use by such carriers of freight cars

* All page references are to the pages of the record filed in this court and which has not yet been printed.

not owned by them and the matter of the accounting and payment for their use of such cars. The petition (Rec., 3) was filed by petitioners on behalf of themselves and all other carriers subject to the Interstate Commerce Act which might have an interest in the premises, since all common carriers by rail in the United States were named as respondents in the proceedings before the Commission and are required to comply with the order.

The order of the Commission (attached to the petition as Appendix B—Rec., 3), requires all common carriers by rail in the United States to establish and observe rules with respect to car hire settlements in conformity with the provisions of the order, and also requires such carriers to cease and desist from applying any rules for car hire settlements in conflict with those prescribed by the order. Paragraphs 2, 3 and 5 of the order require appellants and other carriers similarly situated to permit the use of their freight cars by a designated class of common carriers, either without the payment of any compensation whatsoever for such use or upon the payment of a compensation less than that found by the Commission to be reasonable and proper; require appellants and other carriers similarly situated to pay to carriers owning freight cars, the compensation due such car-owning carriers for the use of their cars by a designated class of common carriers; require appellants and other carriers similarly situated to refund to a designated class of common carriers, under named circumstances, all or practically all the compensation paid by such carriers for the use by them of non-owned freight cars in terminal switching service, and require the payment by appellants and other carriers similarly situated of the expense incurred by a designated class of common carriers in accounting for the use by such

carriers of freight cars not owned by them. For the use of their freight cars and for these payments and assumptions of liability, appellants will receive either no compensation or return whatsoever, or a compensation substantially less than that found by the Commission to be proper. The petition (Rec., 3) alleged that paragraphs 2, 3 and 5 of the Commission's order were void because they operated to confiscate the property of appellants and deprive them of their property without due process of law and without compensation, contrary to the Fifth Amendment to the Federal Constitution; because the classification of railroads created by those paragraphs of the order was arbitrary, unreasonable and illogical, and because the requirements of those paragraphs of the order were not supported by any evidence contained in the record of the proceedings before the Commission.

After a hearing in the District Court, a decree was entered on January 29, 1931 (Rec., 1085), dismissing the petition and sustaining the order in its entirety. The decree of the lower court constituted a final judgment within the meaning of the Act of Congress of October 22, 1913 (38 Stat. at L., 220), and pursuant to the provisions thereof and of the Act of Congress of February 13, 1925 (43 Stat. at L., 938) a direct review of this final judgment and decree may be had in the Supreme Court of the United States. Compliance with the order of the Commission was originally required as of October 1, 1930, but during the pendency of the litigation in the lower court the effective date of the order was extended to January 30, 1931. The Commission having declined to further extend the effective date of the order, appellants complied with its requirements on January 30, 1931, in order to avoid penalties, and it is now in effect.

(4) Cases which sustain the jurisdiction of this court to review said decree are as follows:

Virginian Railway Company v. *United States*, 272 U. S. 658.

United States v. *New York Central Railroad Co.*, 263 U. S. 603.

Dayton-Goose Creek Ry. Co. v. *United States*, 263 U. S. 456.

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Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 69.

THE CHICAGO ROCK ISLAND & PACIFIC RAILWAY COMPANY, CHICAGO & NORTH WESTERN RAILWAY COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, THE CHESAPEAKE & OHIO RAILWAY COMPANY, ERIE RAILROAD COMPANY, THE NEW YORK CENTRAL RAILROAD COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, ATLANTIC COAST LINE RAILROAD COMPANY, LOUISVILLE & NASHVILLE RAILROAD COMPANY, SEABOARD AIR LINE RAILWAY COMPANY, AND SOUTHERN RAILWAY COMPANY,

Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND SOUTH MANCHESTER RAILROAD COMPANY,

Appellees.

BRIEF ON BEHALF OF APPELLANTS.

MAY IT PLEASE THE COURT:

1. REFERENCE TO OFFICIAL REPORT OF OPINION OF LOWER COURT AND TO REPORTS AND ORDER OF INTERSTATE COMMERCE COMMISSION.

No opinion was rendered by the District Court in this case. The court's conclusions are contained in fourteen

findings of fact and four conclusions of law which are not officially reported, but appear at pages 1169 to 1173, inclusive, of the printed record. Two reports were made by the Interstate Commerce Commission in the proceedings before it, the case being entitled "Rules for Car Hire Settlement, Docket No. 17801". The first one dated January 7, 1930, is reported at 160 I. C. C. 369, and appears at pages 17 to 96, inclusive, of the printed record. The second or supplemental report, dated July 15, 1930, is reported at 165 I. C. C. 495, and appears at pages 97 and 98 of the printed record. Attached to the supplemental report of the Commission is the order attacked herein. This order is not contained in the published reports of the Commission, but appears at pages 99 to 117, inclusive, of the printed record.

2. Proceedings Before the Commission.

The case before the Commission, known as "Rules for Car Hire Settlement, Docket No. 17801", was instituted by the Commission upon its own motion and, as appears from its first report (R. 20), relates to,—

> "the rules for car-hire settlement between common carriers by railroad in the United States for the use and detention of freight cars while on the lines of carriers other than their owners."

The order instituting the investigation (Part of Ex. 1, certified to this court) was entered on January 4, 1926, and all common carrier railroads in the United States, including appellants, were named as respondents. Prior thereto, the Commission had considered the matter of car hire in a number of cases involving individual railroads and by orders dated June 7 and June 23, 1926 (Part of Ex. 1, certified to this court) those cases were reopened and/or consolidated with the general investigation, in so far as they related to the subject of car hire. A list of

them appears in the notes at the bottom of pages 372 and 373 of the Commission's first report (R. 20, 21) and they are discussed at pages 401 to 439 of the same report (R. 49-87).

In some of the cases thus consolidated with the general investigation, orders had been entered. Still other cases were pending before the Commission on proposed reports made by Examiners, and still others were pending on complaints in connection with which no hearings had been held. The consolidated proceeding was thereafter set for hearing and hearings were had over a considerable period of time, as a result of which a very large record was made. On all of these hearings the trunk line members of the American Railway Association, including all appellants, were represented by that Association (R. 136, 207, 208, 221).

The record made before the Commission in Docket No. 17801 comprised 4821 pages of testimony and 530 exhibits, many of which were voluminous. This evidence covered a very wide range, and will be referred to later in detail, in so far as it relates to the issues on this appeal. In deciding the case, the Commission made the two reports referred to. In the first one, dated January 7, 1930 (R. 17, *et seq.*) there is a considerable discussion of the evidence. No order was entered at that time but the report concluded with nine specific findings, and it was said that while no order would be entered, the carriers would be expected to modify their rules and practices with respect to car hire to conform to the conclusions expressed in the findings (R. 92, 93).

On April 18, 1930, a petition for rehearing (Part of Ex. 1, certified to this court) was filed with the Commission on behalf of the American Railway Association, which included appellants. This petition was denied on June 9,

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CHARLES ELMORE C

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1931.

No. 69

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL.,

Appellants,

vs.

THE UNITED STATES OF AMERICA, ET AL.,

Appellees.

BRIEF ON BEHALF OF APPELLANTS.

ALFRED P. THOM,
W. F. DICKINSON,
R. N. VAN DOREN,
R. V. FLETCHER,
HERBERT FITZPATRICK,
GEORGE F. BROWNELL,
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F. BARRON GRIER,
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W. R. C. COCKE,
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GUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

1930, and this action was followed by the issuance of the supplemental report of the Commission, dated July 15, 1930 (R. 97, 98). The order herein attacked (R. 99 *et seq.*) was attached to the supplemental report and in that order, the Commission reduced to order form the findings contained in its first report.

The two reports are made a part of the order, which is directed to a great number of common carriers, including all appellants. It contains five numbered paragraphs and orders all respondents named therein to establish, on or before October 1, 1930, and to thereafter maintain, rules with respect to car-hire settlements in conformity with the requirements of those paragraphs; also, to cease and desist, on or before October 1, 1930, from applying any rules with respect to such settlements, which are in conflict with the requirements of those paragraphs. Appellants attack only the requirements of those paragraphs of the order numbered 2, 3 and 5, and are willing to observe and comply with all other requirements of the order. Pending the determination of this litigation in the lower court, the effective date of the order was postponed from time to time (R. 1169) but became effective on January 30, 1931, and is now in effect.

"Car Hire", as the term is generally understood, means the compensation paid by or due from a railroad having possession of a freight car not owned by it, to the railroad owning such car. "Per Diem" is a term which has the same meaning, and is used because the compensation is computed upon a daily or per diem basis. At pages 374 and 375 of the Commission's first report (R. 22, 23) there is a brief statement of the history of car hire, which reflects the facts developed upon the record. Briefly, it was not until 1902 that the railroads of

the country as a whole were able to agree upon rules governing the payment for freight cars by roads using but not owning such equipment. (R. 140, 141). Prior to that time the compensation paid as between railroads for the use of non-owned freight cars had generally been on a mileage basis, which was unsatisfactory for a number of reasons (R. 193, 194, 907). In that year, the first definite agreement known as the Per Diem Code, was promulgated by the American Railway Association, the basic principle of the Code being that per diem should be paid to a railroad owning a freight car for each day the car was off the rails of the owning railroad (R. 141).

Since 1902 there has been a substantial development of that Code. Almost every rule thereof has been changed and some rules have been changed many times, every change having been made as a result of experience which indicated its desirability or necessity (R. 194). At the time of the hearings before the Commission, the rules then in effect (R. 1068) represented the best judgment of men in direct charge of the operation of individual railroads (R. 193). Those rules were made effective through subscription by railroads to what is known as the Per Diem Agreement (R. 194), introduced in the hearings before the Commission as Exhibit 10 (Part of Ex. 1, certified to this court). This agreement is reproduced at page 376 of the Commission's first report (R. 24). In it, each subscribing railroad agrees to abide by and enforce the provisions of the Per Diem Code. The rules themselves are contained in Exhibit 505, filed in the hearings before the Commission (R. 893), and which is reproduced at page 1068 of the printed record.

The Per Diem Code has never been filed with the Commission as a tariff, and it was testified that there were substantial objections to so filing it (R. 220, 907, 908).

Since 1902, the Code has been administered by the American Railway Association, a voluntary association of railroads, formed for the purpose of harmonizing and coordinating, through recommendation, the principles and practices of American railroads with respect to their construction, maintenance and operation (R. 192, 193). The requirements for admission to the Association and subscription to the Per Diem Agreement are set out at pages 376 to 378 of the Commission's first report (R. 24-26). It should be remembered that the American Railway Association has always been a private voluntary organization of American railroads and that the Per Diem Agreement has always been a voluntary agreement between railroads. At no time has the Association been able to compel subscription to that Agreement or compliance therewith, and every common carrier has at all times been a free agent in the matter of agreeing thereto.

The obvious necessity of having some universal standard for the interchange of freight car equipment, the return thereof and payment therefor by roads using but not owning such equipment was so urgent, however, that at the time of the hearings before the Commission, 1347 of a total of 1731 steam railroads in the United States were subscribers to the Per Diem Agreement. These railroads operated 97.79% of all railroad mileage in the United States and owned 99.81% of the interchangeable freight car equipment owned by all common carriers in the country. Of a total of 169 electric railroads in the country, 62 were subscribers, these 62 operating 47.5% of the total mileage and owning 99.75% of all interchangeable freight cars owned by electric lines (Ex. 504 before Commission, R. 1066). These facts were found by the lower court (R. 1170). All the Class I railroads and most of the Class II railroads in the United States are subscribers (R. 196).

Practically all railroads in the country owning interchangeable freight equipment, including each appellant (Ex. 11 before Commission, R. 998 *et seq.*), were subscribers to the Per Diem Agreement at the time of hearings before the Commission, and the operation of the rules was such that approximately 2,600,000 railroad-owned freight cars moved freely under them on the 300,000 miles of railroad in the country (R. 193). It is true that a number of carriers were not subscribers, but such nonsubscribers were principally Class III railroads operating but little mileage and owning but few interchangeable freight cars (R. 196). Moreover, the provisions and requirements of the Code were generally observed by all carriers subscribing thereto.

As appears from Exhibits 502 (R. 1039 *et seq.*), 503 (R. 1053 *et seq.*) and 504 (R. 1066) before the Commission, of 491 nonsubscriber railroads in the country, only 239 were permitted to use freight cars belonging to subscribers without payment therefor at the regular per diem rate. Of these 239 roads, 147 steam roads were industrially owned and received some free use of non-owned freight cars under the provisions of the Code (R. 920) and the decisions of the Commission in the previously decided cases consolidated with Docket No. 17801. Thus, only 92 steam and electric roads were allowed some free use of equipment contrary to the provisions of the Code, and these roads operated only 3,672 miles and owned only 245 interchangeable freight cars. The relative unimportance of these departures from the requirements of the Code is apparent when it is realized that there are 2,900 railroads in the country, operating 325,205 miles and owning 2,633,837 interchangeable freight cars (Ex. 504, R. 1066).

Exhibit 505, introduced in the proceedings before the Commission (R. 893), contains the original and amended forms of each per diem rule, from July 1, 1902, when the Per Diem Code was first promulgated, up to July 1, 1927, together with other information. It appears at page 1068 of the printed record. There was also introduced as Exhibit 506 before the Commission (R. 893) a statement of changes made in certain rules on July 1, 1927 and subsequent thereto up to the close of the hearings, this exhibit appearing at pages 1069 to 1128 of the printed record.

As appears from Exhibit 505, the Per Diem Code consists of twenty rules, each of which is discussed at pages 378 to 400 of the Commission's first report (R. 26 to 48, inclusive). In addition, the Code of Switching Reclaim Rules (pp. 58 to 67 of Ex. 505, R. 1068) is made a part of the Per Diem Code by Per Diem Rule 5 (p. 10 of Ex. 505, R. 1068). Car Service rules 1 to 5, inclusive (p. 55 of Ex. 505; R. 1068) and which govern the physical handling of freight cars as between railroads, are made a part of the Per Diem Code by Per Diem rule 3 (p. 7 of Ex. 505; R. 1068), and Car Service Rule 6; which governs the delivery of cars as between railroads, is made a part of the Code by Per Diem Rule 9 (pp. 17 and 18 of Ex. 505, R. 1068).

Generally speaking, the Per Diem and Reclaim rules completely cover the matter of car interchange between railroads subscribing to the Per Diem Agreement, the accounting and payment by each subscriber for cars used but not owned by it, the reclaims to be allowed, the manner of handling cars and the methods of dealing with nonsubscribers. By Per Diem rule 18 (p. 47 of Ex. 505; R. 1068) it is provided that the Per Diem Code shall not apply to private cars or the cars of non-

subscribers. In deciding the case before it, the Commission did not undertake to change all of the Per Diem and Reclaim rules, nor to prescribe a complete set of rules which should govern the matter of car hire between carriers. On the contrary, the findings of the Commission in its first report (R. 92, 93) and the requirements of its order (R. 99, 100) relate to only a few of the Per Diem and Reclaim rules.

3. FINDINGS OF THE COMMISSION AND REQUIREMENTS OF ITS ORDER.

(a) Per Diem Rule 1 (p. 1, Ex. 505; R. 1068) relates to the per diem rate and since July 1, 1921, has fixed this rate at $1 per car per day. The Commission's discussion of this rule appears at page 378 of its first report (R. 26). The volume of this rate was an issue in Docket 17801 (R. 221) and that issue is dealt with in Finding 1 in the Commission's first report (R. 92), which reads as follows:

> "that common carrier railroads, whether subscribers to the per diem agreement of the American Railway Association or nonsubscribers, are entitled to receive reasonable compensation in the form of a daily rental for the use of their general service freight cars when on foreign lines, and that the present per diem charge of $1 per car day reasonably compensates car owners for average car ownership and maintenance costs. The reasonableness of this per diem rate is not questioned."

In this finding the Commission approves the current per diem rate of $1 per car per day and recognizes the right of every common carrier to receive that amount as compensation for the use of its freight cars by other common carriers. We do not criticize this finding. On the contrary we approve it, and only call attention to it at this time so that the court will have it in mind when

considering the application made by the Commission of the principles therein enunciated.

(b) Paragraph (1) of the order (R. 99) requires

> "that the same daily car rental shall be paid to common-carrier nonsubscribers as respondents contemporaneously pay to subscribers to the per diem rules agreement of the American Railway Association, for the use of general service freight cars."

Since 1920, Per Diem Rule 18 (p. 47 of Ex. 505, R. 1068) has provided as follows:

> "18. These rules shall not apply to private cars or to cars of nonsubscribers."

The rule is quoted at page 398 of the Commission's first report (R. 46), together with a resolution adopted by the Association on November 16, 1915, in which it was recommended that instead of per diem, subscribers to the Per Diem Code should pay mileage for their use of freight cars belonging to nonsubscribers. Such a payment was ordinarily less than the per diem rate of $1, and the recommendation of the resolution was generally complied with by subscribers until the Commission, in the *Lake Erie & Fort Wayne R. R. Co. Case*, 78 I. C. C. 475, which was reopened and consolidated with the general investigation (R. 20, 21) held that the industrial nonsubscriber roads there under consideration should receive the per diem rate for the use of their freight cars by other carriers (R. 901). The purpose of the resolution was to induce subscription to the Per Diem Code and prevent the payment of per diem on private cars belonging to plant facility railroads not common carriers, which payments would amount to rebates to the controlling industry (R. 901-903).

The requirements of Per Diem rule 18 and the resolution of November 16, 1915, are discussed at pages 398 to 400 of the Commission's first report (R. 46-48) and con-

demned in Findings 1 and 2 (R. 92) as being unreasonable. Paragraph (1) of the order is apparently designed to carry those findings into effect. From the Commission's discussion of Per Diem rule 18, it might be concluded that subscribers to the Per Diem Agreement assert their unqualified right to receive per diem but seek to limit the right of nonsubscribers to receive it. This is not correct. Subscriber roads have only insisted that their payment of per diem to a nonsubscriber should be conditioned upon the payment of per diem by nonsubscribers when conditions are reversed.

Appellants do not attack this requirement of the order, but when considered in connection with Paragraph (5) it creates the very condition which subscribers to the Per Diem Agreement have always sought to avoid. It apparently recognizes the right of nonsubscribers, as a class, to receive the per diem rate for the use of their cars by other roads, but does not extend the same right to subscribers. On the contrary, other paragraphs of the order expressly deny to those subscribers the right to receive that compensation for the use of their cars which, under Paragraph (1) is required to be paid to nonsubscribers.

Any doubt which exists of the right of nonsubscriber roads to receive per diem under all circumstances, arises from the uncertainty created by the language used in Paragraph (5). Under that paragraph, all railroads less than 100 miles in length and which deliver to each *subscriber* connection all freight cars received from that connection, are given some free use of freight cars not owned by them. Nothing is said, however, about their obligation to return freight cars to the *nonsubscriber* connection from which they were received. Their failure to return all freight cars to the *nonsubscriber* con-

nection from which they were received, would certainly not deprive such railroads of their right to the free use of cars at the expense of their *subscriber* connections, and it seems to be equally certain that the failure of such railroads to return all cars to the *subscriber* from which they were received would deprive them of all right to the free use of cars. Their right to the free use of cars at the expense of *nonsubscribers,* dependent upon their return of all cars to the *subscriber* from which they were received, is uncertain. If such free use of cars is not intended to be permitted under Paragraph (5), then Paragraph (1) assures nonsubscribers of their right to per diem under all circumstances, while Paragraph (5) denies the same assurance to subscribers.

In any event, Paragraphs (1) and (5) do create a class of railroads which will definitely receive the free use of nonowned freight cars and at the same time be assured of receiving the full per diem rate for the use of their cars by other railroads. The Little River Railroad, Oneida & Western Railroad, Pearl River Valley Railroad, Sumter & Choctaw Railroad and Interstate Railroad (p. 1 of Ex. 40; R. 1168a) are representative of this class.

Each appellant is more than 100 miles in length and is a subscriber to the Per Diem Agreement (Ex. 11, R. 998 *et seq.*). Each is therefore required, under this paragraph and Paragraph (4) of the order, to pay the per diem rate for its use of cars belonging to nonsubscribers. By Paragraph (5) of the order, however, each appellant is required to permit the free use of its cars by a class of railroads principally composed of nonsubscribers.

(c) Paragraph (2) of the order (R. 99) requires "that similar reclaim allowances shall be made to

nonsubscribers as to subscribers of the per diem rules agreement, in connection with cars handled in terminal switching service, as the latter term is defined by the switching reclaim rules of the American Railway Association."

Appellants attack this requirement of the order. The Switching Reclaim rules referred to in this paragraph are contained at pages 58 to 60 of Exhibit 505 (R. 1068) and are also attached to the Commission's first report as an appendix (R. 94-96). As stated, they are made a part of the Per Diem rules by Per Diem rule 5 (p. 10 of Ex. 505; R. 1068).

Per Diem rule 5 and the Switching Reclaim rules are discussed at pages 379 to 386 (R. 27-34) and pages 439 to 444 (R. 87-92) of the Commission's first report. As there pointed out (R. 29), since 1913, Per Diem rule 5 (p. 8 of Ex. 505; R. 1068) has provided that no switching reclaim will be allowed a nonsubscriber, and Per Diem rule 6b (p. 12 of Ex. 505; R. 1068) has contained the same restriction since 1922. Apparently as a result of its previous discussion of switching reclaim, the Commission, in Findings numbered 3 and 4 in its first report (R. 92) condemned the limitations of Per Diem rules 5 and 6b as being unreasonable and said that the same terminal switching reclaim allowances should be made to nonsubscribers as to subscribers. Paragraph (2) of the order carries this conclusion into effect.

While some statements in the Commission's discussion of switching reclaim would indicate that it was objectionable, it is not condemned. On the contrary, it is approved and required to be extended to other railroads which have not heretofore participated in it. Nor is the failure of subscriber roads to extend switching reclaim to nonsubscriber roads found to be an unlawful discrimination. It is only found to be unreasonable.

Switching reclaim is founded upon the practical necessity of relieving a terminal switching road from the payment of per diem. When the Per Diem rules were formulated, it was required that every road pay the per diem rate for its use of freight cars belonging to other carriers (R. 141). It was known, however, that switching roads generally did not receive rates high enough to enable them to pay per diem (R. 158); that many of them would go "broke" if required to pay it, and it was thought impracticable to increase their rates sufficiently to enable them to pay it (R. 142, 158).

Switching charges are theoretically based on cost of operation not including car hire (R. 198), and increasing those charges to include car hire was not only impracticable when the Code was formulated but was still so at the time of the hearings before the Commission (R. 909, 929). Even under the various mileage systems of car hire, no car hire was paid on cars handled in switching service (R. 27, 197, 198). In the Commission's first report, it is said that railway executives sustained the traffic officials in their refusal to increase switching charges by amounts sufficient to absorb car hire (R. 27), but this is inaccurate. The reason given on the record for not so increasing switching charges was that it could not practically be done.

Confronted with this situation, the railroads first proposed to grant switching lines the free use of freight cars not owned by them, but this idea was abandoned because of various complications and objections (R. 198), and the terminal switching reclaim plan substituted. Other suggestions have also been considered, but all committees of the American Railway Association unanimously concluded that switching reclaim was the best method of handling the situation (R. 916). Under such

reclaim, every subscriber railroad pays per diem to all other subscribers whose cars it handles in terminal switching service, as that term is defined in the Reclaim rules. It is then permitted to collect from the line-haul railroad to or from which each car is handled, for each car so handled, an amount representing the average per diem expense per car, incurred by it in handling all cars in such switching service.

Thus, terminal switching reclaim as between subscribers to the Per Diem Code, has always been a voluntary refund to a switching line, of per diem paid by it on cars handled by it in terminal switching service, the refund being made by the line-haul carrier to or from which the car is handled. This refund does not profit the railroad receiving the reclaim, but only makes it whole on per diem paid by it on cars handled in terminal switching service (R. 200). The Commission itself has denominated the plan as a refunding operation (R. 27). It is necessary, however, that the switching service be terminal switching, as this term is defined in the Reclaim rules, and that the service be performed within designated switching limits on a switching charge. Under no other circumstances will terminal switching reclaim be allowed to any road under the rules.

To use an example, the Pennsylvania Railroad might handle a shipment from New York to Chicago in a freight car owned by the Chicago, Rock Island and Pacific Railway, the shipment being consigned to a consignee located on the tracks of the Chicago and North Western Railway in the Chicago switching district. Upon bringing the shipment to Chicago, the Pennsylvania would turn it over to the North Western for delivery to the consignee. In making that delivery, the North Western would handle the car in terminal switching service in the Chicago switching district on a switching charge.

Under the Per Diem rules, the North Western would be obliged to pay to the Chicago, Rock Island & Pacific, the owner of the car, per diem at the rate of $1 per day for the number of days it (the North Western) had the car in such terminal switching service; but in turn would collect from the Pennsylvania, from which it received the car, an amount representing its average per diem expense per car on all cars handled by it in terminal switching service. The effect of the whole operation is to impose upon the Pennsylvania the obligation of assuming the per diem which would accrue upon the car while it is in the possession of the North Western and in terminal switching service, and to relieve the North Western, the terminal switching carrier, of such payment.

As between subscribers to the Per Diem Code, this voluntary refund has been made because of benefits moving to the railroad making the refund. In return for a subscriber's agreement to pay the per diem accruing on freight cars handled by other subscribers in terminal switching service and otherwise comply with the requirements of the Code, every other subscriber agrees to assume the same obligations. Particularly does every other subscriber agree to pay switching reclaims when conditions are reversed, so that every subscriber road receives payment in kind for switching reclaims paid by it (R. 903). For these reasons, reclaim was not allowed to nonsubscribers, which, because of their refusal to subscribe to the Per Diem Agreement, could not be required to sustain the obligations of the Per Diem Code in return for the benefits thereof. Under Paragraph (2) of the order, however, terminal switching reclaim becomes a compelled assumption by subscriber roads of what is, after all, nothing but an operating expense of nonsubscriber roads.

Since the class of railroads created by this paragraph is limited to nonsubscriber roads, it is not the same as the class definitely created by Paragraph (1) of the order and which is entitled to receive per diem under all circumstances, but is not required to pay it. A subscriber road which under the order might be entitled to receive reclaim without allowing it, is still required to allow it under the per diem rules.

For this compelled assumption of the car-hire liability of nonsubscriber roads, subscriber roads will receive nothing. The switching service in connection with which they are required to assume the liability is not performed for them or on their behalf and they get nothing for it, either from the switching line, the shipper or the consignee. They do not have the agreement of nonsubscribers to assume those obligations imposed by subscription to the Per Diem Code and in the absence of such subscription cannot require nonsubscribers to comply with the provisions of that Code.

Nor does the order require such nonsubscriber roads to assume those obligations. There is no requirement that per diem be initially paid by the nonsubscriber, although the necessity for such a payment might be inferred as a prerequisite to the allowance of the switching reclaim. And as we have said, there is no requirement that such nonsubscribers shall allow reclaim to subscribers when conditions are reversed. The result is that subscribers will not receive reclaim from such nonsubscribers unless it is voluntarily paid.

As appears from Exhibit 504 before the Commission (R. 1066), there are 491 railroads which do not subscribe to the Per Diem Agreement and which, under the Per Diem Code, are not entitled to receive terminal switching reclaim from subscribers. Each of these roads, however, has at all times been able to acquire the right

to such reclaim by subscribing to the Per Diem Code and assuming the obligation to pay such reclaim. Under Paragraph (2) of the order, they are given the right to such reclaim without being required to assume any obligation in payment therefor. The disadvantage under which they have heretofore labored, and which they could have eliminated by their own action, has been transferred to subscriber railroads, which are not given the option previously extended to nonsubscribers.

At page 383 of its first report (R. 31) the Commission said:

> "After a road haul movement is performed by a short line carrier and the switching movement by a trunk line, the latter may enforce its right to reclaim."

This is incorrect, for in the instance cited, the trunk line may only enforce its right to reclaim if the so-called short line is a subscriber road. This is so for the reason, as we have pointed out, that up to the time of the Commission's order, switching reclaim had always been a matter of agreement between railroads and was allowed only because of subscription to the Per Diem Agreement and the Per Diem Code, the provisions of which are not binding upon a nonsubscriber thereto and could not be.

Each appellant is a subscriber to the Per Diem Agreement (Ex. 11, R. 998 *et seq.*). On the trial of this case in the District Court, there were introduced in evidence (R. 995) Exhibits 29 to 40, inclusive, which showed, with respect to traffic handled by each appellant in 1929, representative and typical illustrations of the effect of the Commission's order (R. 998). The exhibits were not intended to show the total loss which would be imposed upon each appellant by an application of the order, but were compiled as being illustrative and representative

(R. 998). They are identical in form (R. 997) and Exhibit 40, relating to appellant Southern Railway is reproduced in the printed record (R. 1168a, 1168b) as representative of all such exhibits. The results of the application of Paragraph (2) of the Commission's order are illustrated on page 2 of Exhibit 40 (R. 1168b).

As appears from the lower half of page 2 of that exhibit, the Buffalo-Union Carolina Railroad is not a subscriber to the Per Diem Agreement and owns no freight cars. A witness testified for this road on the hearings before the Commission, his evidence appearing at pages 647 to 651, of the printed record. It connects with the Seaboard Air Line Railway and the Southern Railway, both of which are subscriber roads (R. 1020, 1021). In 1929, the Southern handled 436 cars in terminal switching service to or from this railroad, which also handled 316 cars in terminal switching service to or from the Southern. Up to the time of the Commission's order, the Southern neither received a reclaim from nor paid a reclaim to this railroad, since it was a nonsubscriber (R. 650).

Under Paragraph (2) of the Commission's order, however, the Buffalo-Union Carolina Railroad would have received from the Southern an average switching reclaim of $4 per car on the 316 cars handled by it in terminal switching service to or from the Southern in 1929, or a total amount of $1,264. This payment by the Southern would have permitted the Buffalo-Union Carolina to use the 316 freight cars which it did not own, in the transaction of its own business, for an average period of four days per car at no cost to it. The compensation due the owners of those cars would thus be paid by the Southern; and for this enforced payment of an operating expense of the Buffalo-Union Carolina, the Southern would have received nothing.

It would not receive the benefits which it received from other subscriber railroads because of their subscription to the Per Diem Agreement and could not even compel a similar payment to it on the 436 cars which it handled in terminal switching service to or from the Buffalo-Union Carolina in the same year. And if the Buffalo-Union Carolina had used cars owned by the Southern in terminal switching service, the effect of Paragraph (2) of the order would have been to require their use without the giving of any compensation of any kind to the Southern.

This example is typical. Every such nonsubscriber performing a terminal switching service on cars moving to or from each appellant, as shown on Exhibits 29 to 40, inclusive, will be permitted the same free use of freight cars not owned by it, and in every such case, the cost of furnishing the car for use by such nonsubscribers will be borne by the connecting appellant. Only the amount will vary, dependent upon the number of cars handled in terminal switching service by such nonsubscribers and the length of time they are used.

(d) Paragraph (3) of the order (R. 100) requires,—

> "that short-line railroads which are less than 100 miles in length, and which return railroad-owned equipment to the road from which received, shall not be required to report per diem accruals to numerous car owners throughout the country, but shall be attached to their connecting carriers for purpose of car-hire settlement."

Appellants attack this requirement of the order. Per Diem rule 9 (p. 17 of Ex. 505, R. 1068) requires the exchange between connecting carriers of interchange reports for each calendar day on a prescribed form, in a certain manner; the reports containing a list of cars delivered to or received from connections each day. The rule is discussed at pages 395 and 396 of the Commis-

sion's first report (R. 43, 44). Per Diem rule 10 (p. 18 of Ex. 505, R. 1068) provides that junction reports for each day shall be made to car owners on prescribed forms, these reports advising the car owner that its car has passed from the reporting road to another road. Per Diem rule 11 (p. 24 of Ex. 505, R. 1068) provides that within 40 days after the end of each calendar month, car owners shall be furnished with a per diem report for that month showing the number of days each of its cars has been in the possession of the road making the report. Per Diem rules 10 and 11 are discussed by the Commission at pages 396 and 397 of its first report (R. 44, 45).

The effect of Per Diem rules 9, 10 and 11 is to require every subscriber railroad to report per diem accruals direct to the owners of cars used by it and to pay per diem on such cars direct to such owners. These requirements are condemned as uneconomical and unreasonable in Finding 5, at page 444 of the Commission's first report (R. 92) in so far as they apply to carriers less than 100 miles in length and which return railroad owned equipment to the road from which received. The finding further provides that such roads shall be attached to their connecting carriers for purpose of car-hire settlement, and Paragraph (3) of the order reduces this finding to order form. In designating these roads, the distinction between subscriber and nonsubscriber roads is abandoned, thus creating a class of railroads still different from that created by Paragraphs (1) and (2) of the order.

The provisions of the Per Diem Code do not apply to nonsubscriber railroads and consequently such roads do not now make the reports or payments required by Per Diem rules 9, 10 and 11. Reports and payments for freight cars used by them are made under those rules by

the subscriber railroads which deliver the cars to them. Such delivering carriers are then obligated by Per Diem rule 6 to collect the regular per diem rate, without free time or reclaim, from the nonsubscribers for their use of the cars. Thus, Paragraph (3) of the order does not require any change to be made in the present methods of car accounting as between subscriber and nonsubscriber railroads. It does, however, operate to relieve all subscriber railroads less than 100 miles long and which return railroad-owned equipment to the road from which it was received, from the obligation and expense of reporting their use of freight cars not owned by them. This obligation and expense is imposed upon their connecting lines. And this concession is required to be made only to railroads which have contracted through their subscription to the Per Diem Agreement, to perform at their own expense the duty of accounting for non-owned freight cars used by them.

The obligation of accounting for their use of non-owned freight cars is one assumed by all subscribers to the Per Diem Agreement in return for the benefits moving to them under that Agreement, which include the right to receive an accounting for their freight cars when used by other railroads (R. 903, 904). Under this paragraph of the Commission's order, however, those railroads which are required to assume the car accounting expense of their connections will receive nothing, in money, service or otherwise, for the expenditure which they are required to make. In effect, they are required to pay an operating expense incurred in the independent operation of a connecting carrier, with no benefit or compensation therefor.

Each appellant is more than 100 miles in length (See Ex. 11 before I. C. C.; R. 998-1025; R. 1169) and connects with many carriers less than 100 miles in length

(Ex. 29 to 39, inc., part of Ex. 1 certified to this court, Ex. 40, R. 1168a, 1168b). Each is therefore debarred from receiving the benefit of Paragraph (3) of the order, and to some extent is required to assume the obligation and expense of accounting for freight cars used but not owned by its connections. For example, the Hartwell Railroad, shown on page 1 of Exhibit 40 (R. 1168a) is only 10 miles long, owns no freight cars, connects with only one railroad, the appellant Southern Railway, and of necessity delivers back to the Southern all freight cars received by it from the Southern.

It is qualified, therefore, as a railroad which should be attached to the Southern for purposes of car-hire settlement and, although as a subscriber it was required to report to the owners of freight cars used by it, it is not now required to do this. On the contrary, Paragraph (3) of the order requires the Southern to make reports not only for non-owned freight cars used by it but also for all freight cars used but not owned by the Hartwell. And for this enforced assumption of the obligations of the Hartwell and the resulting expense, the Southern will receive nothing. The same situation exists with respect to every appellant, as shown by Exhibits 29 to 40, inclusive.

It is conceded that the imposition of this burden upon appellants will cost them money (R. 160, 167, 168) but the amount thereof cannot be definitely stated. It would necessarily depend upon the number of cars involved and other circumstances. And it cannot be denied that for this expenditure, appellants will receive nothing.

Nor will the operation of this paragraph of the order be uniform. Railroads such as the Hartwell, which are less than 100 miles long and which have only one connection will, of course, never have to pay the expense of ac-

counting to the owners of freight cars used by them, since they will necessarily return all railroad-owned freight cars used by them to the road from which received. Other railroads, however, may at some periods be enabled to impose their car accounting expense upon their connections and at other periods be required to sustain that expense themselves.

Thus, as appears on page 1 of Exhibit 40 (R. 1168a), the Washington & Old Dominion Railroad, a subscriber 72 miles in length, connects with five railroads, including the Chesapeake & Ohio, Southern and Pennsylvania, appellants here. If it is able to return to each of those railroads during any accounting period, all railroad-owned freight cars which it receives from each of them, it can require them to assume the expense of reporting to the owners of such cars for its use of such cars. If in other periods, however, it is unable to so return to each connection all railroad-owned freight cars received from it, the Washington & Old Dominion must assume its own car accounting expense. The status of railroads less than 100 miles in length and having more than one connection will thus be subject to constant change, dependent upon their ability to return to each connection all railroad-owned freight cars received from it.

Nor is the class of railroads which are required to do the car accounting for their connections any more certain. If a railroad not required to do its car accounting connects with another carrier which has the same right, the order makes no provision as to what should be done. Theoretically, the first carrier could cast its car accounting expense upon the second carrier and the second carrier could cast its car accounting expense upon its connection but without leaving itself any better off. The only railroads which are definitely required to

assume the car accounting expense of some of their connections, with no chance of recouping their losses, are those more than 100 miles in length, such as appellants.

(e) Paragraph (4) of the order (R. 100) provides:

> "That common-carrier railroads which interchange freight cars with more than one subscriber railroad, and which deliver to one or more subscribing carriers, freight cars which are received from another such carrier, and railroads 100 miles or more in length, regardless of the number of railroads with which they connect, shall make car-hire settlements direct with car owners in accordance with the per diem rules."

We do not attack this part of the order. It requires car hire reports and car hire payments in accordance with the Per Diem rules by all railroads, excepting only those which are less than 100 miles in length and which deliver back to each subscriber carrier all freight cars which were received from it, and carries Finding 6 in the Commission's first report into effect (R. 92).

Thus, all railroads other than those excepted, are required to pay per diem at the rate of $1 per car per day for each day's use by them of freight cars not owned by them, and are themselves required to assume the obligation and expense of accounting and paying for all freight cars used but not owned by them. In return for their assumption of these obligations they are given the right to collect the per diem rate, and receive proper reports and accounts when their freight cars are used by other railroads of the same class.

On the other hand, carriers less than 100 miles in length and which deliver to each subscriber carrier all freight cars received from it, are relieved from the obligations to which we have referred and which are imposed by the Per Diem Code, but are granted all benefits of that Code by other provisions of the order. They are given the right

to per diem under Paragraph (1); the right to reclaim under Paragraph (2); are relieved of the obligation of doing their own car accounting by Paragraph (3) and, as we shall point out, are given the right by Paragraph (5) to use cars of other carriers either without any payment therefor or upon the payment of a compensation which is insufficient under the Commission's own findings.

The distinction between railroads, created by Paragraph (4) of the order rests upon two grounds. All railroads 100 miles or more in length are required to report and pay for non-owned freight cars in accordance with the requirements of the Per Diem Code, merely because of their length. They can only receive the benefits of Paragraphs (3) and (5) of the order by ceasing to operate some part of their total mileage. Railroads less than 100 miles in length may receive the benefits of those paragraphs of the order if they are able to return all freight cars to the subscriber carrier from which they were received. If they are so unfortunate as to be unable to so return freight cars, their lack of mileage does not help them. Thus, their right to claim the benefits of Paragraphs (3) and (5) of the order will depend entirely upon their method of handling freight cars, and their status is thus subject to continual change.

The railroads in this excepted class are not necessarily those which are relieved by Paragraph (3) from doing their own car accounting, as the requirements with respect to the return of freight cars to connecting carriers are not the same in Paragraphs (3) and (4). Nor are they necessarily the same railroads that are given the right by Paragraph (2) to receive reclaim without paying it, since the roads favored under all circumstances by Paragraph (2) must be nonsubscribers. Nor are they necessarily the same railroads favored by Paragraph

(1), since the benefits of that paragraph are also confined to nonsubscribers.

(f) Paragraph (5) of the order provides:

> "That common-carrier railroads outside switching districts, other than those referred to in paragraph 4 hereof, shall pay per diem to connecting carriers on railroad-owned freight cars after deducting an average of two days free time per loaded freight car interchanged, settlements to be made at the end of each calendar month, except that no car hire need be paid on cars received for return loading with coal from coal mines which are customarily dependent upon connecting carriers for car supply."

Appellants attack this paragraph of the order. As between subscribers to the Per Diem Code, no free use of non-owned freight cars has been permitted by the Code, as Per Diem rule 1 (p. 5 of Ex. 505; R. 1068) requires that the per diem rate and penalties there prescribed must be paid for every calendar day. Switching reclaim actually does allow the free use of non-owned freight cars, as we have pointed out, but requires the initial payment of per diem by the terminal switching railroad, and is, moreover, reciprocal as between subscriber railroads.

As between subscribers and nonsubscribers, no free use of non-owned freight cars has been permitted to nonsubscribers under Per Diem rule 6b (p. 12 of Ex. 505, R. 1068). This rule is quoted at page 386 of the Commission's first report (R. 34) and the Commission's discussion of it is contained at pages 386 to 395 of its first report (R. 34-43). Presumably as a result of that discussion, the prohibitions of the Per Diem Code against the granting of free time were condemned in Findings 4 and 7, at pages 444 and 445 of the Commission's first report (R. 92, 93) as being unreasonable and Paragraph (5) of the order carries these findings into effect.

Some of the statements contained in the Commission's

discussion of this matter are not in accordance with the record and many are incomplete and misleading. At page 387 of its first report (R. 35), it is said that the so-called short lines receive a short haul in originating traffic; that their expenses include per diem, repair costs, cost of maintaining stations and agents, billing shipments, and cost of rearranging lading; that their trunk line connections receive shipments from them loaded and ready to move and ordinarily receive longer hauls. It is not said, however, that the trunk lines sustain the same costs, although that is the fact. Trunk lines also deliver traffic to the so-called short lines loaded and ready to move, and while they may receive longer hauls on some traffic, on much of it they do not.

On the same page of the first report (R. 35) it is said that the Railroad Administration allowed two days' free time during Federal control to many so-called short line railroads. The fact is that this allowance was made in return for a waiver of claims by the "short lines" against the Railroad Administration, so that the Director-General of Railroads received value for the concessions made by him. Forms of the contracts between the "short lines" and the Director-General were introduced in the hearings before the Commission as Exhibits 26, 27 and 28 (R. 228). These contracts are included in Exhibit 1, certified to this court.

At page 391 of its first report (R. 39), the Commission lists fifteen trunk line railroads and the number of their nonsubscriber connecting railroads, which, it is said, settle their car hire on same basis other than straight per diem. The statement is misleading. Of the seventeen nonsubscribers of the Missouri Pacific Railway which did not pay per diem of $1 per day per car, twelve are industrially owned (R. 864, 865) and the settlements with them are not in violation of Per Diem rule 6b. This

is also true of the five nonsubscriber connections of the Chesapeake & Ohio Railway which do not pay straight per diem (R. 958) and of two of the nonsubscriber connections of the Southern Railway which do not pay straight per diem (R. 959). Of the nonsubscriber connections of the Baltimore & Ohio Railroad which do not pay straight per diem, six, at least, settle car hire under orders of the Commission (R. 948, 949). On the Pennsylvania Railroad there is only one departure from rule 6b as between that road and its nonsubscriber connections (R. 931, 932). As we have pointed out, there have been some departures from the Per Diem Code as between subscribers and nonsubscribers, but they are few in number and relatively unimportant.

On page 391 of the Commission's first report (R. 39) it is also said that the reasons for the establishment of Per Diem rule 6b were not clearly explained. On the contrary, they were clearly explained. The record shows that the rule was established, not only to stimulate subscription to the Per Diem Agreement, but to prevent the giving of concessions through waiver of per diem (R. 195).

In discussing Per Diem rule 6b, the Commission also stated that so-called short lines were not consulted when the rule was passed, and that the American Railway Association took no steps to counteract the losses sustained by them. It is true that such roads were not consulted, since they were not subscribers to the Per Diem Agreement nor members of the Association, and properly had no voice in the matter. Also they sustained no losses through the enactment of the rule. It only required them to pay an expense incurred in the operation of their own roads, which certainly is not a loss caused by the rule.

On page 394 of the Commission's first report (R. 42) it is said:

> "The record demonstrates that there is no substantial difference in the physical service performed by terminal switching roads on the one hand and short terminal railroads outside switching districts on the other hand."

This conclusion was repeatedly stated on the hearings before the Commission as a fact (R. 150, 151, 210, 218) but there is no proof whatever in the record that it is true. It is adopted by the Commission as correct without any proof of that correctness. On the same page of the report (R. 42) it is said that participation or non-participation in through rates is the governing factor in determining the right of a railroad to reclaim, and not the character of service. This is incorrect. The Reclaim Rules (pp. 58 *et seq.* of Ex. 505; R. 1068) require that in order to get switching reclaim, a road must not only receive a switching charge, but that its service must be a switching service performed within a designated switching district.

The free use of freight cars granted by Paragraph (5) of the order falls into two categories. The first part of the order gives an average of two days' free time per loaded car interchanged to all railroads outside switching districts, other than those referred to in Paragraph (4) of the order. Paragraph (4) prescribes car-hire settlements direct with car owners, in accordance with the Per Diem rules, for all railroads more than 100 miles in length and which do not return freight cars to the subscriber road from which they were received. Thus, under the first part of Paragraph (5) every railroad less than 100 miles in length, which is outside a switching district and which does return cars to the subscriber from which they were received, is given an average allowance of two days' free use of non-owned freight cars

for every loaded car which it interchanges. This allowance is obviously intended to be granted in connection with the use of cars in line-haul movement under local or joint rates, as distinguished from a switching movement, since the language used excludes railroads inside switching districts. They are presumably taken care of by Paragraph (2). As appears from Exhibits 29 to 40, inclusive, each appellant connects with many railroads which will secure this free use of freight cars.

The exact effect of this part of Paragraph (5) may best be shown by reference to an example on Exhibit 40. On page 1 of that exhibit (R. 1168a) the Hartwell Railroad appears as a non-coal originating subscriber railroad operating outside of a switching district, being ten miles in length and owning no freight cars. Its only connection is the Southern Railway, an appellant here, and it necessarily returns all cars which it uses to the Southern. In 1929, the Hartwell interchanged with the Southern 1751 loaded per diem cars owned by railroads other than the Hartwell, after having used them for a total of 1624 days. As a subscriber, it was required to and did, under the Per Diem Code, pay $1,624 in per diem on those cars direct to the owners thereof. Under Paragraph (5) of the order it would have received an allowance of 3,502 days during which it would be permitted to use the 1751 cars without charge. This allowance was larger than the payment due, and, therefore, Paragraph (5) of the order would have permitted the use of those cars by the Hartwell without charge or expense to it.

Under Paragraph (2) of the order the Hartwell is attached to the Southern for purposes of car-hire settlement, and under Paragraphs (1) and (4) the Southern is obliged to pay per diem to nonsubscribers and in addition, make its own car-hire settlements in accordance

with the Per Diem Code. The per diem of $1,624 which accrued on the cars while they were in use on the Hartwell is therefore required to be assumed by the Southern. If any of the 1,751 cars used by the Hartwell had been Southern cars, the Southern would have been required to furnish its own equipment to the Hartwell without receiving any compensation for that use. If the 1,751 cars used by the Hartwell included cars owned by carriers other than the Southern, then the Southern would have been required to pay per diem thereon to the owner for the use of those cars by the Hartwell, and could not recapture this amount from any source. Thus, the Southern would have been deprived either of its own cars or of the money required to pay for cars owned by other roads and used by the Hartwell.

The case of the Alabama & North Western Railroad (p. 1, Ex. 40, R. 1168a) is an example of how this part of Paragraph (5) of the order substantially reduces the per diem expense of some roads without completely eliminating it. The Alabama & North Western is a non-coal originating nonsubscriber railroad, operating outside of a switching district, 21 miles in length and owning no equipment. It connects only with the Southern, and necessarily returns all freight cars to it. In 1929, it interchanged 2,642 loaded per diem cars with the Southern, after having used them for a total of 7,624 days. For this use it paid the Southern $7,624 at the rate of $1 per car per day, and the Southern became obligated to and did pay the same rate to the owners of the cars during the period of their use by the Alabama & North Western. Paragraph (5) of the order, however, would have permitted a deduction of 5,284 days from the 7,624 days, leaving a balance of 2,340 days for which the Alabama & North Western would have been required to pay the Southern at the rate of $1 per car per day, or $2,340.

Thus, the obligation of that road would have been reduced from $7,624 to $2,340, a difference of $5,284. The Southern, however, would still have been obliged to assume the payment of $7,624 for the use of the cars by the Alabama & North Western, either by permitting the use of its own cars without the payment of compensation or by paying the amount to the railroads whose cars were used. In either case, the saving of $5,284 to the Alabama & North Western becomes an obligation of the Southern under the order.

The same situation will obtain with respect to every other appellant and every other railroad similarly situated. Only the amount of their losses will be uncertain, this uncertainty resulting from the fact that a railroad which interchanges freight cars with more than one subscriber railroad, must, in order to get the free use of non-owned freight cars, return to each such subscriber railroad all freight cars received from it.

With respect to roads not situated as the Hartwell and Alabama & North Western are, the first part of Paragraph (5) is indefinite and uncertain. It is required that the railroad receiving the free use of freight cars shall be outside a switching district, but there is nothing to indicate whether or not it has to be entirely outside. Thus, a railroad which is otherwise qualified to use non-owned freight cars without payment, may have part of its line in a switching district and receive reclaim under Paragraph (2) and perform a line-haul service on the rest of its line. The York Utilities Company is such a carrier, being 37 miles in length and performing both line-haul and terminal switching service (R. 182-184). Whether or not Paragraph (5) entitles it and other railroads similarly situated to the free use of freight cars in its line-haul business does not appear. In addition, there is the uncertainty to which we have already

referred, arising from the fact that a road receiving the free use of cars is required to return all freight cars to to the subscriber connection from which they were received. Whether or not a railroad would be entitled to the free use of cars at the expense of its connecting nonsubscriber roads, if it failed to return to such nonsubscribers all freight cars received from them, is not determined by the order.

Under the second part of Paragraph (5), it is provided that no car hire need be paid on cars received for return loading with coal from coal mines which are customarily dependent upon connecting carriers for car supply. Presumably, this release from all obligation to pay car hire is intended to benefit railroads less than 100 miles in length, which are outside switching districts and which return all freight cars to the subscriber railroad from which they were received, but this meaning does not clearly appear. The doubt as to the meaning of the language used arises because that provision of the paragraph relating to the free use of cars for return loading with coal is an exception to what precedes it. Whether or not a coal originating road is entitled to the free use of cars furnished it for return coal loading, if it fails to return such cars to the subscriber connection from which they were received, it is not definitely stated in the order. We assume, however, that roads given the free use of cars for coal loading are required to return such cars to the connecting road from which they were received, since the use of the words "return loading" imply such a return of the car. This, however, is the most limited meaning that can be attached to the language used, and viewed from that standpoint, this part of Paragraph (5) constitutes a complete discharge of any obligation on the part of the carriers specified to make any payment whatsoever for their use of freight

cars not owned by them, if received as stated. This free use of cars is also granted in connection with their use in line-haul movement.

It will be observed that the language used does not make the release from the obligation to pay per diem dependent upon return of a car loaded with coal. The car is only required to be delivered to the favored carrier for the purpose of return coal loading at a mine customarily dependent upon a connecting carrier of the favored road for its car supply. If for any reason a car is not so loaded and returned, it may presumably be used by the favored road in its own business for as great a length of time as it desires to use it, and may then be returned empty to the connecting carrier without the payment of any compensation whatsoever.

Here again, the operation of this part of Paragraph (5) may best be shown by an illustration from Exhibit 40. On page 1 of that exhibit (R. 1168a), the Tennessee Railroad is shown as a nonsubscriber coal originating road, 45 miles in length, owning no freight cars and connecting only with the Southern Railway, an appellant here. A witness testified for this road, his testimony appearing at pages 643 to 647 of the printed record. The mines served by it are necessarily dependent upon the Southern, its connecting carrier, for their car supply, and all cars furnished it must be returned to the Southern. In 1929 it used 10,456 per diem cars supplied to it by the Southern for coal loading, for a total of 17,919 days and for such use paid the Southern $17,919 at the rate of $1 per car per day. Under this part of Paragraph (5) of the order it would have paid nothing. The Southern, on the other hand, would have been required to assume the entire amount of $17,919, either by permitting the use of its own cars without receiving any compensation therefor, or by paying to the owners of

those cars, under Paragraphs (1), (3) and (4) of the order, the per diem which accrued on them while they were in use on the Tennessee.

The foregoing illustration is representative of the situation existing under this part of Paragraph (5) with respect to each appellant, as shown on Exhibits 29 to 40, inclusive. Only the amount of which each appellant will be deprived in the case of roads such as the Tennessee, will be uncertain, since it will vary with the number of cars used by such coal originating connections, the length of time they are used and the purpose for which they are delivered to the coal originating road.

If we assume an obligation on the part of coal originating roads to return coal cars to the connecting subscriber road from which they were received, then the class of railroads created by this part of Paragraph (5) will vary as to membership in the same manner as the membership of the class created by the first part of the paragraph.

The losses that will be sustained under Paragraph (5) by appellants and other railroads similarly situated cannot be definitely shown, but they are certain to be substantial. Again referring to Exhibit 40 as an example, the upper half of page 1 (R. 1168a) names twelve railroads less than 100 miles in length and connecting only with appellant, Southern Railway. Since they must return all freight cars to the Southern, they are surely qualified to receive an average of two days' free use of such cars for each loaded car interchanged. In connection with cars used only by these roads in 1929, Paragraph (5) would have required the Southern to assume a loss of $55,487 which would have resulted either from the use of its cars without compensation, or from its enforced payment of per diem for the use by those twelve

railroads of freight cars owned by other railroads. And if the other ten railroads shown in this part of Exhibit 40 were able to return to the Southern all freight cars received from it, the loss of the Southern would have been increased to $82,863. To this amount should be added $39,432, representing the loss which would have been imposed on the Southern under the second part of Paragraph (5) in connection with the use of coal equipment by the four coal originating roads shown on the lower half of page 1 of Exhibit 40 (R. 1168a).

In connection with the requirements of Paragraph (5) of the order, we again call attention to Finding numbered 1 in the first report of the Commission (R. 92). As we have pointed out, this finding recognizes the right of all railroads, including appellants, to receive compensation of $1 per car per day for the use of their freight cars by other railroads. Paragraph (5) of the order, however, in contradiction of Finding 1, deprives appellants and other railroads similarly situated of the right to receive this compensation for the use of their freight cars by designated railroads.

Also, the very railroads which are given the free use of non-owned freight cars under Paragraph (5), at the expense of appellants and other carriers similarly situated, are required, by Paragraph (1) of the order, to be paid per diem without free time allowance, when their cars are used by appellants. Thus, the Sumpter & Choctaw Railroad (p. 1 of Ex. 40, R. 1168a) will receive the free use of non-owned freight cars, at the expense of the Southern Railway, but as a nonsubscriber will receive the full per diem rate without deduction, under Paragraph (1), when its 91 cars are used by appellants or any other railroad similarly situated. The Little River Railroad (p. 1 of Ex. 40, R. 1168a) which was a subscriber to the Per Diem Agreement at the time of the

hearings, would also have received the free use of non-owned freight cars at the expense of the Southern, but as a subscriber, would have received full per diem without free time allowance when its 30 cars were used by appellants or other railroads similarly situated. This road has now become a nonsubscriber without altering its condition. The order still requires that it be given all the rights of a subscriber to the Per Diem Agreement but relieves it of all the obligations of a subscriber.

For the enforced payments to be made by appellants and the enforced losses to be sustained by them under Paragraph (5) of the order, the order provides no compensation or return whatsoever to them. They are deprived of the use of their own cars either without any payment, or upon the payment of an amount less than that found reasonable by the Commission, or are required to pay the car hire bills of connecting carriers. There is no suggestion in the reports or order of the Commission that any benefit will accrue to them because of their enforced assumption of these losses and payments.

(g) In Findings 8 and 9 in the first report of the Commission (R. 93), the bases of car-hire settlement in force on certain named roads is found unreasonable and the connecting carriers of those roads are directed to make car-hire settlements with them in conformity with the preceding findings to which we have referred. All the railroads named in these two findings were involved in the cases reopened and/or consolidated with the general investigation and which are discussed at pages 401 to 439 of the Commission's first report (R. 49-87). All unexpired orders entered in those cases, in so far as they were in conflict with the order entered in Docket No. 17801, were vacated by the latter order (R. 100), thus carrying into effect the conclusions reached by the Com-

mission in Findings 8 and 9. It results that Paragraphs (1) to (5), inclusive, of the order entered by the Commission in Docket No. 17801 on July 15, 1930, represent the final views of that body with respect to the subject of car hire between common-carrier railroads.

4. Proceedings in the Lower Court.

The suit in the District Court was brought by appellants on behalf of themselves and all other carriers subject to the Interstate Commerce Act which might have an interest in the premises (R. 1), to enjoin and annul Paragraphs (2), (3) and (5) of the Commission's order. The United States and the Commission were named as defendants (R. 1), and prior to the hearing, the South Manchester Railroad Company intervened as a defendant (R. 126-128). The suit was heard by a statutory court of three judges, pursuant to the provisions of the Urgent Deficiencies Appropriation Act of October 22, 1913 (38 Stats. at L. 220, Title 28, U. S. C. A., Sec. 47).

The petition (R. 1, *et seq.*) asserted the invalidity of Paragraph (2), (3) and (5) of the order on the ground that the requirements of those paragraphs were in excess of the Commission's powers; were arbitrary, unlawful and void; that there was no evidence in the record of the proceedings before the Commission justifying or supporting them and that they violated appellants' rights under the Fifth Amendment to the Constitution of the United States, in that they operated to confiscate appellants' property and deprive them of that property without due process of law and without compensation. The defendants filed answers (R. 119, 122, 128) alleging the validity of the Commission's order.

Upon the hearing in the lower court the entire record made before the Commission in the general investiga-

tion, Docket No. 17801, duly certified by the Secretary of the Commission, was introduced in evidence by appellants as Exhibit 1 (R. 131, 132), and there were also introduced by appellants as Exhibits 2 to 28, inclusive (R. 132-135), the entire records made before the Commission in the cases reopened and/or consolidated with the general investigation, all being certified by the Secretary of the Commission. The lower court, therefore had before it all the evidence submitted to the Commission prior to the issuance of its reports and order in Docket No. 17801.

In addition, appellants introduced Exhibits 29 to 40, inclusive, (R. 995) which exhibits showed, with respect to each petitioner, representative and typical illustrations of the effect of the order. On January 29, 1931, a final decree was entered in the lower court dismissing the petition and sustaining the order in its entirety (R. 1174). As we have said, the lower court wrote no opinion in deciding the case but filed fourteen findings of fact and four conclusions of law (R. 1169-1173). An appeal from the decree so entered by the lower court was duly taken to this court.

On this appeal, all the oral testimony taken by the Commission in Docket No. 17801 and in Docket No. 16420, *South Manchester Railroad Company* v. *New York, New Haven & Hartford Railroad Company*, one of the cases consolidated with Docket No. 17801, has been reduced to narrative form and incorporated in the printed record, under a stipulation of the parties that such narrative statement of evidence is a true and correct statement in narrative form of the oral testimony introduced in those proceedings, and sets forth in condensed form all oral testimony essential to the decision of the questions presented by the appeal (R. 1183, 1184). In addition, the printed record in this court includes certain of

the more important exhibits offered in the proceedings before the Commission and in the lower court. All of the exhibits offered in the lower court, with the exception of the oral evidence taken before the Commission in Dockets Nos. 17801 and 16420, were also certified to this court as original exhibits and are on deposit with the clerk.

5. Proceedings in This Court.

In accordance with Paragraph (1) of Rule 12 of the revised rules of this court, a statement of the grounds upon which the jurisdiction of this court is invoked was duly filed by appellants. Subsequently, they also filed a motion to advance the case for hearing. On June 1, 1931, this court entered an order finding that probable jurisdiction had been shown, and advancing the case and setting it for hearing on October 5, 1931, after the cases theretofore assigned for that day.

Specification of Errors.

Appellants make the following specification of errors:

1. The lower court erred in failing to hold that Paragraphs (2), (3) and (5) of the Commission's said order, which require appellants to pay the car accounting and car hire expenses of other common-carrier railroads and permit the use of freight cars owned by appellants by such other common carriers, all without the payment of any compensation or adequate compensation to appellants, were void and beyond the power and jurisdiction of the Commission, and in failing to hold that said paragraphs of the order operate to confiscate the property of appellants and deprive them of their property without due process of law and without compensation, in violation of their rights under the Fifth Amendment to the Constitution of the United States.

2. The lower court erred in failing to hold that the evidence in the record of the proceedings before the Commission was insufficient to support the requirements of Paragraphs (2), (3) and (5) of said order and in holding that such evidence fully supported each finding of the Commission.

3. The lower court erred in failing to hold that the evidence in the record of the proceedings before the Commission was insufficient to afford a fact basis for the requirements of Paragraphs (2), (3) and (5) of said order.

4. The lower court erred in holding that the statement of the evidence introduced in the proceedings before the Commission, as contained in the Commission's report dated January 7, 1929, fully covers the controverted issues.

5. The lower court erred in failing to hold that the classification of railroads created by the said order of the Commission was arbitrary, unreasonable and illogical and was not supported by any evidence in the record of the proceedings before said Commission.

6. The lower court erred in failing to hold Paragraphs (2), (3) and (5) of the said order void for the reason that, as shown by the evidence in the record of the proceedings before the Commission and the reports of the Commission, the requirements of said paragraphs of the order were based upon insufficient and improper evidence pertaining to an issue not involved in the proceedings before the Commission.

7. The lower court erred in failing to hold that the Commission's order is void as being arbitrary, unreasonable and illogical and unsupported by and contrary to the findings and the evidence in the case.

SUMMARY OF ARGUMENT.

I.

It is doubtless true that in this case the Commission had jurisdiction to institute the proceeding on its own motion and to prescribe such reasonable and proper rules relating to car service as were justified by the evidence, and also to prescribe the reasonable compensation to be received by each railroad for the use of its cars by another railroad. The Commission, however, does not have unlimited power to regulate interstate commerce through the making of orders relating to matters within its jurisdiction. While this court will not weigh the evidence and substitute its judgment for that of the Commission, orders entered by that body will be set aside if they are unsupported by the evidence, were made without a hearing, exceed constitutional limits, or amount to an abuse of power. If the order here involved is subject to any of these objections, it will be set aside.

II.

Paragraphs (2), (3) and (5) of the order entered by the Commission unquestionably operate to take the property of appellants and other railroads similarly situated without compensation or without adequate compensation. Neither the reports of the Commission nor its order indicate that any benefit or payment will move to appellants and other railroads similarly situated, to compensate them for the losses imposed upon them by those paragraphs of the order. Without more, the decisions of this court necessarily require that those paragraphs be set aside. The issues before the Commission involved no question of rates, divisions, costs of transportation, car service, car distribution or the obligation of railroads to

own freight cars. There is no public interest to be considered and no such interest will be affected by the decision herein. Thus, those decisions of this court modifying property rights and requiring the performance of some service without compensation have no application.

III.

The evidence in the record of the proceedings before the Commission does not justify the requirements of Paragraphs (2), (3) and (5) of the order. This evidence consisted of nothing more than the requests of individual witnesses that the railroads represented by them be allowed the concessions now extended to them under those paragraphs of the order. No reasons are assigned, either in the evidence or in the reports of the Commission, which constitute a legal justification for the requirements of those paragraphs of the order. Moreover, it is obvious that the only purpose of the Commission in making those paragraphs of the order was to effect a transfer of revenue as between railroads. This was not an issue in the case and the record does not contain the evidence upon which an order having this effect must be predicated.

IV.

The classifications of railroads made in the Commission's order are arbitrary and unreasonable. They are not supported by any evidence in the record of the proceedings before the Commission, bear no logical relation to any lawful result sought to be accomplished, are not uniform in their application, create discriminations and inequalities between railroads, are arbitrary and unreasonable, and operate to confiscate the property of appellants in violation of their constitutional rights. They are not justified by those decisions of this court sustaining statutory classifications of railroads as legitimate exercises of a State's power to regulate in the public interest.

ARGUMENT.

I.

THE POWER OF THE COMMISSION TO REGULATE INTERSTATE COMMERCE IS NOT ABSOLUTE. ANY ORDER MADE BY IT, PRESUMABLY IN THE EXERCISE OF ITS JURISDICTION, WILL BE ENJOINED IF IT IS UNSUPPORTED BY EVIDENCE, EXCEEDS CONSTITUTIONAL LIMITS, IS ARBITRARY AND UNREASONABLE OR FOR ANY OTHER REASON AMOUNTS TO AN ABUSE OF POWER.

Jurisdiction over the matter of car hire as between railroads subject to the Act to Regulate Commerce is conferred upon the Commission by Paragraphs (10) to (14), inclusive, of Section 1 of that Act (U. S. C. A., Title 49, pp. 101 to 115). Paragraph (10) defines car service as specifically including the use, control, supply, movement, distribution, exchange, interchange and return of cars and other vehicles used in the transportation of property. Paragraph (11) requires every carrier to furnish adequate car service and establish just and reasonable rules and regulations with respect thereto.

Paragraph (12) requires every carrier to make a just and reasonable distribution of coal cars among mines served by it, whether located upon its line or lines or customarily dependent upon it for car supply, and prescribes some detail to be observed in making such distribution. Paragraph (13) authorizes the Commission to require all carriers to file with it their rules and regulations with respect to car service and to incorporate such rules and regulations in tariffs. Paragraph (14) gives the Commission authority after hearing, on complaint or on its own

initiative, to establish reasonable rules, regulations and practices with respect to car service, including the compensation to be paid for the use of any car not owned by the carrier using it.

Under these sections of the law it has been held that the Commission has power to regulate the distribution of freight cars and that this power is exclusive. *United States* v. *New River Company,* 265 U. S. 533. These paragraphs of the statute were also considered in *Peoria & Pekin Union Railway* v. *United States,* 263 U. S. 528 and in *Assigned Car Cases,* 274 U. S. 564. It cannot be doubted that under the law, the Commission had jurisdiction to institute this proceeding on its own motion; to prescribe such reasonable and proper rules relating to car service as were justified by the evidence, and also to prescribe the reasonable compensation to be received by any railroad, a party to the proceeding, for the use of its cars by another railroad.

This power of the Commission, however, is not unlimited. It is necessary that the record of the proceedings before the Commission contain evidence supporting the requirements of its order. The order may not confiscate the property of appellants in violation of their constitutional rights, or deny them due process of law. The requirements of the order must be reasonable and not be arbitrary or amount to an abuse of power. If the order is subject to any of these objections, it will be set aside.

It is well settled that in a proceeding to set aside and enjoin an order of the Commission, this court will not weigh the evidence and substitute its judgment for that of the Commission, but in every case so holding, the limitations upon the Commission's power to which we have referred have been enumerated. The rule is well stated in *Manufacturers Railway Company* v. *United States,*

264 U. S. 457, 481, where this court said that administrative orders of the Commission,

> "operating *in futuro*, are not to be disturbed by the courts except upon a showing that they are unsupported by the evidence, were made without a hearing, exceed constitutional limits, or for some other reason amount to an abuse of power."

This statement of the rights and powers of the Commission in making orders and the limitations imposed upon it by law has been approved by this court in many cases. *Assigned Car Cases*, 274 U. S. 564; *Virginian Railway Company* v. *United States*, 272 U. S. 658; *Western Chemical Company* v. *United States*, 271 U. S. 268; *United States* v. *New River Company*, 265 U. S. 533; *New England Divisions Case*, 261 U. S. 184.

In *United States* v. *Chicago, etc. R. Co.*, 282 U. S. 311, decided in January, 1931, and involving the validity of an order of the Commission, this court said at page 327:

> "The power to regulate commerce is not absolute, but is subject to the limitations and guarantees of the Constitution, among which are those providing that private property shall not be taken for public use without just compensation and that no person shall be deprived of life, liberty or property without due process of law. *Monongahela Navigation Co.* v. *United States*, 148 U. S. 312, 336; *United States* v. *Joint Traffic Association*, 171 U. S. 505, 571-572; *Adair* v. *United States*, 208 U. S. 161, 180."

We do not contend that the order here under attack was made without a hearing. Numerous hearings were held and a complete record was made. We do contend that Paragraphs (2), (3) and (5) of the Commission's order exceed the constitutional limits within which the Commission must function, in that they operate to confiscate appellants' property and require its taking without compensation to them and without due process of law; that the evidence before the Commission does not

support the conclusions reached in those paragraphs and that they are arbitrary, unreasonable, not supported by the evidence and amount to an abuse of power. If these things are true, those paragraphs of the order should be set aside. The Urgent Deficiencies Appropriation Act of October 22, 1913 (38 Stat. L. 220; Title 28 U. S. C. A. Sec. 47) expressly authorizes a suit to set aside an order of the Commission "in whole or in part." This part of the law was considered in *United States* v. *Chicago, etc. R. Co., supra,* at page 328.

II.

IT MUST BE CONCEDED IN THIS CASE THAT PARAGRAPHS (2), (3) AND (5) OF THE COMMISSION'S ORDER OPERATE TO TAKE THE PROPERTY OF APPELLANTS AND OTHER RAILROADS SIMILARLY SITUATED WITHOUT COMPENSATION OR WITHOUT ADEQUATE COMPENSATION. WITHOUT MORE, IT IS PLAIN THAT THESE PARAGRAPHS OF THE ORDER SHOULD BE SET ASIDE.

The issues in the proceedings before the Commission were closely defined. The specific matter put in issue by the Commission's order instituting the investigation was the rules for car-hire settlement between common-carrier railroads. Rates for transportation and divisions of those rates were not in issue (R. 152, 220, 288, 292, 307, 315). The obligation of any railroad to own freight cars was not in issue (R. 228). Nor were individual costs of transportation involved (R. 175).

Nor is the matter of car supply to shippers and consignees involved in the proceeding. Appellants and other members of the American Railway Association have always conceded their obligation to permit the use of their freight cars by other carriers. As early as 1911, the

Commission held, in *Missouri & Illinois Coal Co.* v. *Illinois Central R. Co.*, 22 I. C. C. 39, that the Interstate Commerce Act required the interchange of freight cars between carriers subject thereto and that a carrier could not refuse to allow its equipment to leave its rails. This conclusion was affirmed in *Car Supply Investigation*, 42 I. C. C. 657, in which it was said that the Commission should be given statutory power to prescribe rules to govern the interchange of equipment. Since then it has been given this power in Paragraphs (10) to (14), inclusive, of Section 1 of the Act (U. S. C. A., Title 49, pp. 101 to 115).

And without regard to the requirements of the law, it is a practical necessity that freight cars be interchanged freely among all railroads. Certainly, the business of the country could not be carried on if this was not done. In *Car Shortage Investigation*, 12 I. C. C. 561, decided in 1907, the Commission said at page 573:

> "It is not many years since the railroad which originated freight transferred at its junctions to the cars of the connecting roads. Each railroad was thus made to supply its own equipment. This was an uneconomical and time wasting method, and so out of their own necessities and to give a prompter service the railroads developed the practice which generally obtains today of permitting cars to pass onto the tracks of their connecting roads and making a per diem charge therefor. Under this system the present method of hauling freight over several connecting lines has made possible the great body of through transportation which is perhaps the most distinctive feature of American railroading."

And at p. 576 it is said:

> "The traffic of this country cannot be moved in the fashion which obtained in the early days of railroading when transfers were universal at junction points."

And in *Missouri & Illinois Coal Co.* v. *Illinois Central R. Co., supra,* it was said at page 44:

> "The commerce of the country is regarded as national, not local, and the railroads are required to serve the routes which they have established, or which they may have been required to establish, without respect to the fact that this may carry their equipment beyond their own lines."

Our only claim in this respect is that for the required use of our cars by other carriers, proper compensation should be paid. Realizing that the matter of car hire only involved railroads, the Commission named railroads as the only respondents in the proceedings before it and they are the only parties to which the order is directed With one exception, no evidence was offered on any hearing, by any member or representative of the general public. The one exception is the testimony of a representative of automobile manufacturers who testified with respect to a matter not involved on this appeal (R. 855, 856). Thus, the only matters for decision by the Commission were the rules under which freight cars were interchanged between railroads, and the compensation to be paid by a railroad for a car used but not owned by it.

In this case the taking of appellants' property is perfectly evident. Under Paragraph (2) of the order they will be required to pay the car hire bills of certain of their connections, incurred by those connections, because of their use of cars not owned by them, in performing terminal switching service. Under Paragraph (3) they will be required to assume the car accounting expense of certain of their connections. Under Paragraph (5) they are neither compelled to permit the use of their equipment by designated carriers, without compensation or without adequate compensation, or to pay the car hire expenses of those connections, incurred in the operation

of their own properties. The order of the Commission is specific in requiring these expenditures by appellants and neither the reports or order of the Commission indicate that any benefit will accrue to them as a result thereof. In the absence of facts completely justifying this result, the law plainly requires that these paragraphs of the Commission's order must be annulled.

The Fifth Amendment to the Constitution of the United States provides that no person shall be deprived of his property without due process of law, and that private property shall not be taken for public use without just compensation (U. S. C. A. Part 2, Constitution, pp. 517, 546). The prohibition of this amendment has been held to constitute a limitation upon national action. *Hunter* v. *Pittsburgh*, 207 U. S. 161, 176. Its purpose is to give the same protection against Federal action as is afforded by the Fourteenth Amendment with respect to state action. *Tonawanda* v. *Lyon*, 181 U. S. 389, 391; *Cass Farm Company* v. *Detroit*, 181 U. S. 396, 398. The words "due process of law" mean the same thing in both the Fifth and Fourteenth Amendments. In the Fifth Amendment the words constitute a limitation on Federal action, and in the Fourteenth a limitation on state action. *Hurtado* v. *California*, 110 U. S. 516, 535; *Bartlett Trust Company* v. *Elliott*, 30 Fed. (2d) 700; *United States* v. *Armstrong*, 265 Fed. 683.

It cannot be doubted that the right of ownership of railway property is entitled to the protection of constitutional guarantees. *Western Union Telegraph Company* v. *Pennsylvania Railroad*, 195 U. S. 540, 570; *Atlantic Coast Line Railway Company* v. *Commission*, 206 U. S. 1, 20; *Missouri Pacific Railway* v. *Nebraska*, 217 U. S. 196, 206; *Northern Pacific Railway* v. *North Dakota*, 236 U. S. 585, 595.

Many cases have been decided on the question of what constitutes a taking of property, without due process of law under the Fifth and Fourteenth Amendments to the Constitution. In one of the earlier cases, the *Railroad Commission Cases*, 116 U. S. 307, which was a suit to enjoin the operation of state statutes regulating railroad rates, this court said with respect to the powers of a state under the Fourteenth Amendment (p. 331):

> "From what has been said it is not to be inferred that this power of limitation or regulation is itself without limit. This power to regulate is not a power to destroy and limitation is not the equivalent of confiscation. Under pretense of regulating fares and freights, the state cannot require a railroad corporation to carry persons or property without reward; neither can it do that which in law amounts to a taking of private property for public use without just compensation or without due process of law."

In *Chicago, Milwaukee & St. Paul R. Co.* v. *Minnesota*, 134 U. S. 418, the railroads contested an order of the Minnesota Commission, entered under authority of a state statute. This court said at page 458:

> "If the company is deprived of the power of charging reasonable rates for the use of its property and such deprivation takes place in the absence of an investigation by judicial machinery, it is deprived of the lawful use of its property and thus, in substance and effect, of the property itself, without due process of law and in violation of the Constitution of the United States; and in so far as it is thus deprived, while other persons are permitted to receive reasonable profits upon their invested capital, the company is deprived of the equal protection of the laws."

The case of *Reagan* v. *Farmers Loan & Trust Company*, 154 U. S. 362, is a leading case on this subject. It was an action on behalf of certain railroad stockholders, bringing into question the propriety and validity of the

Texas Railroad Commission law. At page 399 this court said:

"These cases all support the proposition that while it is not the province of the courts to enter upon the merely administrative duty of framing a tariff of rates for carriage, it is within the scope of judicial power and a part of judicial duty to restrain anything which, in the form of a regulation of rates, operates to deny to the owners of property invested in the business of transportation that equal protection which is the constitutional right of all owners of other property. There is nothing new or strange in this. It has always been a part of the judicial function to determine whether the act of one party (whether that party be a single individual, an organized body or the public as a whole) operates to divest the other party of any rights of person or property. * * * the forms of law and the machinery of government, with all their reach and power, must in their actual workings, stop on the hither side of the unnecessary and uncompensated taking or destruction of any private property, legally acquired and legally held."

At page 410 it was further said:

"The equal protection of the laws—the spirit of common justice—forbids that one class should by law be compelled to suffer loss that others may make gain. If the State were to seek to acquire the title to these roads under its power of eminent domain, is there any doubt that constitutional provisions would require the payment to the corporations of just compensation, that compensation being the value of the property as it stood in the markets of the world and not as prescribed by an act of the legislature? Is it any less a departure from the obligations of justice to seek to take, not the title but the use for the public benefit at less than its market value?"

And in concluding upon the subject, this court said at page 412 of its decision that:

"justice demands that everyone should receive some compensation for the use of his money or prop-

erty if it be possible without prejudice to the rights of others."

In *Missouri Pacific Railway* v. *Nebraska*, 164 U. S. 403, which was an appeal from an order of the Nebraska Commission requiring the railroad to furnish part of its right of way for elevator construction, this court said at page 417:

> "This court, confining itself to what is necessary for the decision of the case before it, is unanimously of the opinion, that the order in question, so far as it required the railroad corporation to surrender a part of its land to the petitioners for the purpose of building and maintaining their elevator upon it was, in essence and effect, a taking of private property of the railroad corporation for the private use of the petitioners. The taking by a state of the private property of one person or corporation, without the owner's consent, for the private use of another, is not due process of law and is a violation of the Fourteenth Amendment of the Constitution."

In *Chicago, Burlington & Quincy Railroad* v. *Chicago*, 166 U. S. 226, which was an appeal from a condemnation award made under state statute, this court said at page 236:

> "Due process of law as applied to judicial proceedings instituted for the taking of private property for public use means, therefore, such process as recognizes the right of the owner to be compensated if his property be wrested from him and transferred to the public. The mere form of the proceeding instituted against the owner, even if he be admitted to defend, cannot convert the process used into due process of law, if the necessary result be to deprive him of his property without compensation."

In *Union Bridge Co.* v. *United States*, 204 U. S. 364, which was an action by the Government under federal authority, to require the making of certain changes in a bridge over a navigable stream, the case of *Chicago, Burlington & Quincy Railroad* v. *Commissioners*, 200 U. S.

561, was approved and the following quotation from that case was included in the opinion at page 396:

> "The constitutional requirement of due process of law, which embraces compensation for private property taken for public use, applies in every case of the exertion of governmental power. If in the execution of any power, no matter what it is, the government, Federal or State, finds it necessary to take private property for public use, it must obey the constitutional injunction to make or secure just compensation to the owner (citing cases). If the means employed have no real substantial relation to public objects which government may legally accomplish, if they are arbitrary and unreasonable, beyond the necessities of the case, the judiciary will disregard mere forms and interfere for the protection of rights injuriously affected by such illegal action. The authority of the courts to interfere in such cases is beyond all doubt. *Minnesota* v. *Barber*, 136 U. S. 313, 320."

In *Chicago, M. & St. P. R. Co.* v. *Wisconsin*, 238 U. S. 491, the state sued to collect a statutory penalty because the upper berth in a sleeping car had been let down, although not sold, contrary to the state statute. This court held that the statute was unconstitutional, as taking propery without compensation, saying at page 499:

> "For the state could not authorize the occupant of the lower berth to *take* salable space without pay, neither can the present statute compel the company to *give* that occupant the free use of that space until it is actually purchased by another passenger. The owners' right to property is protected even when it is not actually in use, and the Company cannot be compelled to permit a third person to have the free use of such property until a buyer appears."

And at page 500 it was said:

> "But if the statute is not a reasonable exercise of the police power and yet operates to take property, such taking cannot be justified on the ground that the Company *may* be able to secure an increase in rates. For, without considering any other question

involved, it is sufficient to say that the taking and a fixed right to compensation must coincide, though in some cases, the time for payment may be delayed."

And at page 501, this court said:

"The right of the State to regulate public carriers in the interest of the public is very great. But that great power does not warrant an unreasonable interference with the right of management or the taking of the carriers' property without compensation."

Other cases reiterating these principles of law are *Dow* v. *Biedelman*, 125 U. S. 680; *Budd* v. *New York*, 143 U. S. 517; *Monongahela Co.* v. *United States*, 148 U. S. 312; *St. Louis & San Francisco Railroad Co.* v. *Gill*, 156 U. S. 649; *Smyth* v. *Ames*, 169 U. S. 466; *Cotting* v. *Kansas City Stock Yards Company*, 183 U. S. 79; *A. C. L. R. Co.* v. *Commission*, 206 U. S. 1; *Twining* v. *New Jersey*, 211 U. S. 78; *Adair* v. *United States*, 208 U. S. 161; *Missouri Pacific Railway* v. *Nebraska*, 217 U. S. 196; *Oregon, etc. R. Co.* v. *Fairchild*, 224 U. S. 510; *Southern Railway Co.* v. *Shealy*, 18 Fed. (2nd) 784.

Nor can confiscation be disguised as regulation, for in *A. C. L. R. Co.* v. *Commission*, 206 U. S. 1, this court said at page 20:

"Wherever the power of regulation is exerted in such an arbitrary and unreasonable way as to cause it to be in effect not a regulation but an infringement upon the right of ownership, such an exertion of power is void because repugnant to the due process and equal protection clauses of the Fourteenth Amendment."

Nor can the public interest be made to serve as an excuse for confiscation. In *Northern Pacific Railway Company* v. *North Dakota*, 236 U. S. 585, a suit to enjoin a state statute fixing the rates on coal, this court said at page 595:

"The public interest cannot be invoked as a justification for demands which pass the limits of reason-

able protection and seek to impose upon the carrier and its property burdens that are not incident to its engagement."

The foregoing cases may be considered as definitely stating the law of the land with respect to the taking of private property without due process of law, as that term is used in the Fifth Amendment to the Constitution. And this is so whether the taking is for public or private use. In the *Railroad Commission Cases*, 116 U. S. 307, and *Smyth* v. *Ames*, 169 U. S. 466, a taking for public use was specifically condemned, and in *Missouri Pacific Railway* v. *Nebraska*, 164 U. S. 403, and *Little Falls Co.* v. *Ford*, 229 N. Y. Supp. 445, a taking for private use was also condemned.

Under these circumstances, the decision of this court in *St. Louis & O'Fallon Railroad Co.* v. *United States*, 279 U. S. 461, prescribes the duty of the Commission in a case like this. That case was a suit to set aside a valuation order of the Commission, and in setting the order aside the court said at page 487:

> "In the exercise of its proper function this Court has declared the law of the land concerning valuations for rate-making purposes. The Commission disregarded the approved rule and has thereby failed to discharge the definite duty imposed by Congress. Unfortunately, proper heed was denied the timely admonition of the minority—'the function of this commission is not to act as an arbiter in economics, but as an agency of Congress, to apply the law of the land to facts developed of record in matters committed by Congress to our jurisdiction.' * * *
>
> Whether the Commission acted as directed by Congress was the fundamental question presented. If it did not, the action taken, being beyond the authority granted, was invalid."

We are aware of those decisions of this court which apparently permit the taking of railroad property without compensation under some circumstances. The rule

in such instances is stated in *Missouri Pacific Railway Company* v. *Nebraska*, 217 U. S. 196, where this court said at page 206:

> "Now it is true that railroads can be required to fulfil the purposes for which they are chartered and to do what is reasonably necessary to serve the public in the way in which they undertake to serve it, without compensation for the performance of some part of their duties that does not pay. *Missouri Pacific Railway Co.* v. *Kansas*, 216 U. S. 262. It is also true that the States have power to modify and cut down property rights to a certain limited extent without compensation, for public purposes, as a necessary incident of government—the power commonly called the police power. But railroads after all are property protected by the Constitution, and there are constitutional limits to what can be required of their owners under either the police power or any other ostensible justification for taking such property away."

This rule is based upon a duty of the railroads to the public. That is to say, they are obliged under their duty to the public, either charter or otherwise, to do some things in the interest of public safety or to serve some other public interest, and for which, considered alone, they do not receive adequate compensation.

Illustrations of this rule are found in a number of cases. In *N. Y. & N. E. Railroad* v. *Bristol*, 151 U. S. 556, an order of a State Commission requiring a separation of grades was sustained, the court holding, at page 567, that the constitutional rights of the railroad company were not violated by requirements securing public safety. In *New Orleans Co.* v. *New Orleans*, 281 U. S. 682, the suit was brought to set aside an ordinance requirement of the city with respect to certain track and crossing construction. This court said at page 687:

> "It is elementary that enforcement of uncompensated obedience to a regulation passed in the legiti-

mate exertion of the police power is not a taking of property without due process of law."

In *A. C. L. R. Co.* v. *Commission*, 206 U. S. 1, which was a suit to set aside an order requiring the giving by the railroad company of certain local train service, the order was sustained as not unreasonable, even though the train was run at a loss. The court based its decision on the fact that it was part of the general duty of the railroad company to furnish such service.

On the other hand, in *Mississippi* v. *M. & O. R. Co.* 224 U. S. 388, the railroad company attacked an order of a State Commission requiring the restoration of six passenger trains which had been discontinued. This court upheld the power of the State to regulate such matters, even when in some cases the service was to be performed at a loss, but it further held that the order must be reasonable and that even in such case a railroad was entitled to the protection afforded it by its constitutional rights. In that case the order was annulled.

As lately as May, 1931, this court in *Atchison, Topeka & Santa Fe Railway Company* v. *Railroad Commission*, 283 U. S. 380, reannounced this rule. At pages 394 and 395 it is said:

"The principle that the State, directly or through an authorized commission, may require railroad companies to provide reasonably adequate and suitable facilities for the convenience of the communities served by them, has frequently been applied. *Wisconsin, Minn. & Pac. R. C.*, v. *North Carolina Corp. Comm.*, 206 U. S. 1, 26, 27; *Missouri Pacific Ry. Co.* v. *Kansas*, 216 U. S. 262, 279; *Seaboard Air Line Ry. Co.* v. *Railroad Comm.*, 240 U. S. 324, 327; *Mississippi R. R. Comm.* v. *Mobile & Ohio R. Co.*, 244 U. S. 388, 390, 391; *Erie R. Co.* v. *Public Utility Commrs.*, 254 U. S. 394, 409, 410. Railroad carriers may be compelled by state legislation to establish stations at proper places for the convenience of their patrons. *Minneapolis & St. L. R. Co.* v. *Minnesota*,

193 U. S. 53, 63. They may be required at their own expense to construct bridges or viaducts whenever the elimination of grade crossings may reasonably be insisted upon, whether constructed before or after the building of the railroads, *Missouri, Kansas & Texas Ry. Co.* v. *Oklahoma*, 271 U. S. 303, 307. But the power to regulate is not unlimited. 'It may not unnecessarily or arbitrarily trammel or interfere with the operation and conduct of railroad properties and business.' *Norfolk & Western Ry. Co.* v. *Public Service Comm.*, 265 U. S. 70, 74; *Mississippi Railroad Comm.* v. *Mobile & Ohio R. Co., supra.*

These decisions, however, are not applicable in the case at bar. As we have heretofore pointed out, no shipper or consignee has any interest in this litigation. Rates of transportation are not involved. The financial status of the railroads, either individually or as a whole, is not in issue. There is no question of divisions of rates collected from the public for transportation. There is no issue of car supply or car distribution, since appellants admit their obligation to permit the use of their cars by other railroads, subject to their constitutional right to receive proper compensation. No matter what the outcome of this case, no member of the public will be prejudiced. Transportation service will be rendered as before. Freight cars will still be available for the transportation of all freight at rates which will not be changed as the result of any decision herein.

This results from the nature of the proceedings. No member of the public is directly interested in whether or not some railroads pay reclaim to other railroads; whether the car accounting expense of some railroads is paid by other railroads, or whether the cars of some railroads are used by other railroads without payment therefor. These circumstances are not of importance in the dealings between the railroads and the public. It was undoubtedly in recognition of this fact that the Commis-

sion limited the list of respondents to common carrier railroads.

A further circumstance distinguishing this case from the line of cases to which we have just referred is that in those cases there was involved either a charter or other obligation by the railroad to furnish the service in issue, or a question of the proper exercise of police power by a public authority. Neither of these factors are present in the case at bar. There is no charter or other obligation on appellants and other railroads similarly situated, to directly pay any part of the operating expenses of other railroads or to turn over their freight cars to such railroads without compensation. These matters do not affect public safety or convenience in any respect.

Nor is there involved any question of police power. The order of the Commission cannot be an exercise of such power since it has no such power. The issues presented in the case at bar must, therefore, be judged from the standpoint of those cases which uniformly condemn the taking of any property for public or private use without the payment of just compensation therefor.

From the reports of the Commission, it is obvious that the burdens imposed upon appellants under the order are imposed for the purpose of benefitting certain railroads at the expense of appellants and other railroads similarly situated. This also was the situation in *Chicago, St. Paul, Minneapolis & Omaha Railway* v. *Holmberg*, 282 U. S. 162, in which the Railway Company attacked an order of the State Railway Commission of Nebraska requiring the Railway Company to establish an underground cattle pass under its tracks. In reversing the order of the Commission and the decision of the Supreme Court of Nebraska affirming it, this court said at page 167:

"It is plain that the Commission proceeded upon

the assumption that the statute authorized it to compel plaintiff to establish the underground pass for the convenience and benefit of defendant in the use of his own property, and that that alone was the ground and purpose of the order. The application thus given to the statute deprives plaintiff of property for the private use and benefit of defendant, and is a taking of property without due process of law, forbidden by the Fourteenth Amendment. *Missouri Pacific Ry. Co.* v. *Nebraska*, 164 U. S. 403; *Missouri Pacific Ry. Co.* v. *Nebraska*, 217 U. S. 196; *Great Northern Railway Co.* v. *Minnesota*, 238 U. S. 340; *Great Northern Railway Co.* v. *Cahill*, 253 U. S. 71."

The Commission has done here exactly the same thing done by the Nebraska Commission in the Holmberg case. It has assumed that Paragraphs (10) to (14), inclusive, of Section 1 of the Interstate Commerce Act authorize it to make rules with respect to car hire settlements for the benefit of certain railroads and at the expense of other railroads. Such a construction and application of the law should be condemned.

III.

THERE IS NO EVIDENCE IN THE RECORD OF THE PROCEEDINGS BEFORE THE COMMISSION JUSTIFYING THE REQUIREMENTS OF PARAGRAPHS (2), (3) AND (5) OF THE ORDER.

As we have said, a large mass of evidence was offered upon the hearings conducted by the Commission. Witnesses representing a substantial number of so-called "short lines" appeared and testified with respect to the car-hire arrangements under which they were operating. Since each witness acccommodated his testimony to the requirements of his road, almost every one desired something different, but they were a unit in proposing that their roads be given the free use of freight cars which they did not own.

Generally speaking, this testimony all followed the same lines, and a reference to the testimony of a few of the witnesses will serve to illustrate the whole body of the record. In considering the evidence it should be remembered that all railroads which were respondents in the proceedings before the Commission were common carriers, and that as such, all of them, subscriber and nonsubscriber roads, were entitled to the same rights and subject to the same obligations.

(a) *Paragraph* (2) *of the order.*

This is the paragraph which requires that the same reclaim be granted to nonsubscribers as is granted to subscribers to the Per Diem Agreement. The York Utilities Company, referred to at page 390 of the Commission's first report (R. 38) is typical of roads which will be benefitted by this requirement and the testimony of its witness is representative. The testimony is reproduced at pages 182 to 184 of the printed copy.

The burden of it is that this nonsubscriber road performs a terminal switching service for the Boston & Maine but receives no reclaim; that as a nonsubscriber it is required to pay $1 a day for every non-owned car used by it and that it can not afford to do this; that the Boston & Maine makes more money on cars handled by the York Utilities Company in terminal switching service than it makes on cars which it handles itself in terminal switching service, since in the first case it receives $1 a day for the use of the car and in the second case has to furnish the car itself or at its own expense. As a matter of fact, however, this railroad had in effect a demurrage rate which it had increased by the amount of per diem paid by it, so that during the time it was refusing to pay per diem to the Boston & Maine it was collecting that per diem from shippers and consignees

in the demurrage rate. Its specific request was that it be allowed to use non-owned freight cars for three days without payment therefor.

Evidence of this type, together with the conceded fact that subscriber railroads allow reclaim as between themselves, must have been the fact basis upon which the requirements of Paragraph (2) are founded, and is, we submit, insufficient. In the entire discussion of reclaim contained in the Commission's first report, the relations between subscribers and nonsubscribers are only once referred to. This is on page 381 of the Commission's first report (R. 29) where it is said that in order to induce subscription to the Per Diem Agreement, the per diem rules have, since 1913, restricted the reclaim allowance to subscriber railroads. It is impossible, therefore, to determine from the Commission's report just why it was concluded that the same reclaim should be allowed to nonsubscriber roads as to subscribers. No reason for this conclusion is assigned, either in the reports or order. It will also be observed that the prohibition against the allowance of reclaim to nonsubscriber roads is only found to be unreasonable (R. 92). There is no suggestion or finding that it produces an unlawful discrimination.

Dealing with the reasons which may have moved the Commission to the conclusion reached by it, it is obvious that the desire of a nonsubscriber railroad to receive terminal switching reclaim is not sufficient. There must be something more than this. Some sort of a legal obligation to allow such reclaim must rest upon the subscriber road. It is equally obvious that the claimed inability of a railroad to pay for its use of non-owned freight cars in terminal switching service does not justify the requirement that its connecting carrier make the payment. There must be more than this.

The car-hire obligations of a common-carrier railroad have no different status than its obligation to pay the wages of its employes. Car hire is nothing more than an operating expense of a railroad and the law does not yet require that any carrier or designated class of carriers must sustain the obligation of directly paying operating expenses incurred in the operation of another railroad. If certain railroads do not receive sufficient net income with which to pay these expenses, the law provides other methods of increasing it. Moreover, the record does not show that appellants and other subscriber railroads are financially better off than the nonsubscribers benefitted by Paragraph (2).

Nor does the fact that subscriber roads allow terminal switching reclaim as between themselves justify the requirements of Paragraph (2). As we have pointed out, a subscriber road receiving terminal switching reclaim gives something for it. It allows reclaim when conditions are reversed, pays per diem for its use of nonowned freight cars and accounts for its use of such cars direct to the owner thereof. These things are not required to be done by a certain class of nonsubscriber roads which will receive reclaim under Paragraph (2). Such nonsubscribers will not be required to account for cars used by them if they can qualify under Paragraph (3). They will not be required to pay reclaim. Nor will they have to pay per diem if they can bring themselves within Paragraph (5). Under these circumstances, a difference in treatment between nonsubscriber roads and subscriber roads is justified.

The Commission may have felt that the requirement of Paragraph (2) removed discrimination, although it was not found that the failure of appellants and other roads similarly situated to allow terminal switching re-

claim to nonsubscriber roads was discriminatory. But it cannot be sustained on this ground. Both the Commission and this court have held that there can be no discrimination if conditions are dissimilar. *Ayrshire Coal Co.* v. *Southern R. Co.*, 118 I. C. C. 531. *Interstate Commerce Commission* v. *B. & O. R. Co.*, 145 U. S. 263, 276, 281. In this case, the evidence is clear that different conditions obtain in the allowance of terminal switching reclaim as between subscriber roads and the allowance of this reclaim as between nonsubscriber and subscriber roads. Moreover, even if the facts had justified a finding of discrimination, the paragraph must fall, since it allows no alternative to appellants and other railroads similarly situated.

In *Great Northern Railway Company* v. *Minnesota*, 238 U. S. 340, the Railway Company attacked an order of the Minnesota Railroad & Warehouse Commission directing the erection of a stock scale at one of its stations. It appeared that the Railway Company maintained such scales at other stations, but contended that even if this produced a discrimination, the Minnesota Commission acted arbitrarily and unreasonably in seeking to eliminate the discrimination by requiring the construction of another scale without opportunity to the Railway Company to accomplish the same result through discontinuing the scales already installed. With respect to this point, this court said at pages 346 and 347:

> "This contention is sound and must be sustained. Conceding power to inhibit discrimination the Commission could not exercise it unreasonably by needlessly taking property or, what comes to the same thing, obligating incurrence of expense wholly unnecessary. It by no means follows, simply because a railroad voluntarily supplies a convenience at some stations which attracts trade, that it can be commanded positively to do likewise at other places along the line. A railroad's possessions are sub-

ject to its public duty but beyond this and within charter limits, like other owners of private property, it may control its own affairs. Discontinuing the use of existing scales would abate the alleged discrimination and probably entail little, if any, outlay. The Commission's order precluded use of this method to bring about lawful conditions and therein, we think, was plainly arbitrary and unreasonable. *Missouri Pacific Railway* v. *Nebraska*, 164 U. S. 403, 417; *Donovan* v. *Pennsylvania Company*, 199 U. S. 279, 293; *Missouri Pacific Railway* v. *Nebraska*, 217 U. S. 196, 206."

The same situation exists in this case. Any discrimination against nonsubscriber roads resulting from the allowance of terminal switching reclaim as between subscriber roads, could have been cured by the complete discontinuance of the allowance of such reclaim.

Moreover, even if it be assumed that Paragraph (2) is intended to eliminate an inequality or discrimination as between subscriber roads on the one hand and nonsubscriber roads on the other, it fails of its purpose. It gives nonsubscribers the right to terminal switching reclaim, but they are not required to allow such reclaim either by the order or by the Per Diem rules. Thus, any burden that such nonsubscriber roads may have rested under because of their failure to receive terminal switching reclaim is only transferred from them to appellants and other subscriber roads which are required to allow such reclaim. Surely, such action cannot be said to cure any discrimination that existed. If it existed before, it exists under the Commission's order.

It may be argued that it is an injustice to require nonsubscriber roads to pay per diem without receiving terminal switching reclaim, since the record does show that switching charges generally are not high enough to permit such payment, and that they cannot practically be increased. Such an argument, however, could not

justify the requirements of Paragraph (2) under the facts of record. Nonsubscriber roads have always been able to secure such reclaim by paying the price subscriber roads have always paid. They have always been able to secure it by agreeing to pay per diem for their use of non-owned freight cars, do their own car accounting and grant reclaim when the Per Diem rules required it. Paragraph (2) only transfers any burden under which nonsubscriber roads may have rested, to appellants and other subscribers, but without allowing appellants and other subscribers any method of avoiding it.

Thus, we may concede, for the purpose of the argument, that neither the Southern Railway or the Buffalo-Union Carolina Railroad (p. 2 of Ex. 40, R. 1168b) receive sufficient income from their switching charges to pay per diem on non-owned cars used by them in terminal switching service. Neither road allowed terminal switching reclaim to the other and consequently both lost money on the service (R. 648-650). Paragraph (2) takes care of the Buffalo Union-Carolina in this situation, by requiring that the per diem on cars used by it in terminal switching service be paid by the Southern, or that the Southern furnish its cars for that service without compensation. The loss which the Southern has always sustained in fulfilling its common-carrier obligation is not only still sustained by it, but under Paragraph (2) is substantially enlarged because of its enforced assumption of an operating expense arising out of the operation of the Buffalo Union-Carolina. Nor does the order permit any escape by the Southern from this obligation.

It is clear that Paragraph (2) of the order takes appellants property. It is equally clear that they get nothing to compensate them for that taking. Since there

is no evidence which justifies such a taking, if indeed an evidence could justify it, the results produced by the paragraph come within the prohibition so often expressed by this court. We submit that the paragraph should be set aside.

(*b*) *Paragraph* (3) *of the Order.*

This is the paragraph which requires that the car accounting expense of railroads less than 100 miles in length and which return railroad-owned freight cars to the road from which they were received, be assumed by their connecting carriers. The Oneida & Western Railroad, referred to by the Commission at page 399 of its first report (R. 47) is representative of the class of railroads which will be benefitted under this paragraph of the order, since it is only 30 miles long and returns all cars to the Southern, its only connection. The testimony of its witness appears at pages 667 to 671 of the printed record.

From that testimony it appears that at the time of the hearings the road was a subscriber to the Per Diem Agreement, having become a subscriber because of its desire to get per diem on ten cars owned by it when they were used by other carriers. At the time of the hearings, it was receiving reports showing the use of its cars by other railroads and was receiving per diem on those cars under the provisions of the Per Diem Code. Its complaint was that in order to receive such reports and per diem and other benefits of its subscription, it was compelled to spend some money in making reports to the owners of freight cars which it used, and in other ways. This expenditure was not much of a burden to this particular railroad, since it earned 5.57% in 1926, on a valuation of $1,400,000 (R. 669) and about 4.75% in 1925 (R. 671).

The Bennettsville & Cheraw Railroad will also benefit under Paragraph (3). The testimony of its witness appears at pages 663 to 666 of the printed record. This road is a subscriber 32 miles in length. It connects with the Seaboard Air Line Railway and Atlantic Coast Line Railroad, but can return to these roads all cars received from them, since it handles no traffic from one to the other. It became a subscriber road in order to get reclaim, but complains of the obligation to report its use of freight cars to the owner thereof. It also had net railway operating income in 1926 of almost $20,000 on a value of approximately $350,000.

Evidence of which the foregoing is typical, together with the conceded facts that appellants and other subscriber roads accounted for non-owned freight cars used by nonsubscriber roads, and that during Federal control, so-called "short lines" were attached to their connecting carriers for purposes of car-hire settlement, constitutes all of the evidence on the subject in the record of the proceedings before the Commission. Such evidence and the facts we have stated must have furnished the fact basis for the conclusion expressed in Paragraph (3), if the Commission confined its consideration to matters of record.

As in the case of Paragraph (2), there is nothing in the Commission's reports and order which enlightens us as to the reasoning upon which it reached the conclusion expressed in Paragraph (3). The evidence of record, however, certainly does not justify that conclusion. The expressed desire of some railroads to escape the expense of accounting for non-owned freight cars used by them is surely not sufficient. There must be something more than this.

Nor can the possible financial difficulties of [illegible]lroad

be urged in justification of Paragraph (3). If a railroad's revenue is insufficient to enable it to pay the expenses incurred in its operation, other methods are provided for increasing that revenue. Its rates may be increased or its divisions may be increased, but certainly its net revenue may not be increased by the imposition of one item of its operating expense upon its connecting railroads. This is particularly true in this case, since the rates, divisions and financial condition of the railroads were not in issue.

Nor does the fact that subscriber railroads now perform this accounting service for connecting nonsubscriber railroads justify the requirements of Paragraph (3). Appellants and other railroads similarly situated have a substantial reason for doing the accounting for cars used by their connecting nonsubscriber roads. The Per Diem rules require reports to a car owner for the use of its cars by other railroads to be made only by subscriber roads. A nonsubscriber road, not being bound by those rules, makes no such reports. In order, therefore, that the owner of a freight car may know who is using his car and that he may be protected in his undoubted right to receive compensation for such use, subscriber roads, as between themselves, have voluntarily agreed to make the necessary reports. Such action enables subscriber roads to permit the use of their cars by nonsubscriber roads but requires them to assume an obligation which should have been imposed by the Commission in this case upon all railroads.

But this voluntary action of appellants and other subscriber roads, agreed to because of the necessities of the case, does not support the requirements of Paragraph (3). There was no evidence that it created any unlawful discrimination, and the Commission has not found that any such discrimination existed. And even if it

had been found to exist or was proven by the evidence, Paragraph (3) must still fall, since it does not extend to appellants and other railroads similarly situated, the right to cure such discrimination by discontinuing their practice of accounting to each other for freight cars used but not owned by connecting nonsubscriber railroads. *Great Northern Railway Company* v. *Minnesota*, *supra*.

Nor does the action of the Director-General during Federal control constitute a good precedent. As we have pointed out, allowances were only made by him to those railroads which signed contracts waiving all claims against the Railroad Administration. He received value for what he gave, whereas appellants will receive nothing.

The action of appellants and other subscriber railroads in requiring all subscribers to do their own car accounting is found by the Commission to be uneconomical and unreasonable (R. 92). This means that a requirement that every common-carrier railroad pay its own operating expenses is uneconomical and unreasonable, since the cost of accounting for freight cars used but not owned is nothing but an operating expense of every railroad. The Commission has condemned this requirement, not because of any stated violation of law, but apparently for the sole reason that it thinks some other practice would be better and would simplify accounting.

Conceding the Commission's broad authority, we submit that it may not deprive appellants of their property for such reasons, and that its action in that respect is so arbitrary that it should not be sustained. Paragraph (3) of the order unquestionably confiscates the property of appellants and other railroads similarly situated, in

that it requires the expenditure of their money in the payment of an operating expense of certain of their connecting lines, without any return or compensation whatsoever to them and without justification in the law or in the evidence. It is confiscation disguised as regulation, and as such is prohibited by those cases which we have heretofore cited. In the words of the opinion in *A. C. L. Ry.* v. *Commission,* 206 U. S. 1, 20, it is

> "not a regulation, but an infringement upon the right of ownership."

We submit that the paragraph should be set aside.

(c) *Paragraph* (5) *of the Order.*

This is the paragraph which extends to designated railroads the right to use freight cars belonging to other railroads in line-haul traffic, either without the payment of any compensation or upon the payment of compensation less than that found reasonable by the Commission; or requires them to expend their money in paying the car hire expenses of such connections. The paragraph is in two parts, the first relating to general service freight cars and the second to cars furnished for return coal loading. For convenience, we will deal with the two parts of the paragraph separately.

Dealing first with the free use of general service cars, almost every railroad which owned no interchangeable freight cars, and whose witnesses testified upon the hearings before the Commission, desired this free use of non-owned freight cars in some form. In the testimony of these witnesses, various periods of such free use were asked for, the period varying only because each witness was interested in getting enough free use of non-owned freight cars to permit his railroad to use them without payment.

We may refer to the requests of certain roads as being typical and illustrative of what was desired and the reasons therefor. The Bloomsburg & Sullivan Railroad wished the free use of each non-owned freight car for four days in line-haul traffic because such an allowance was analogous to the switching reclaim allowances made between subscribers and because this allowance would practically eliminate its car hire expense. Its witness did not feel that it had enough money to pay car hire but was willing to pay if it had the money (R. 368-371). The Lake Champlain & Moriah Railroad wished to settle car hire with its connecting road on a demurrage basis as this would permit it to use non-owned freight cars without payment. It was in favor of anything that would permit it to use non-owned cars for nothing and felt that it was entitled to this concession because all its originated traffic was delivered to the Delaware & Hudson Company, its only connecting carrier (R. 179-182).

The Arcade & Attica Railroad desired two days' free use of non-owned freight cars because this allowance would reduce its car hire bill to practically nothing. It asked for this allowance because it was not making enough money, but was willing to pay car hire if its revenue was increased. It wanted more money, either in reduced costs or increased revenue (R. 189-192). The Big Sandy & Kentucky River Railroad desired any basis of car hire which would eliminate all expense to it in connection with its use of cars which it did not own, and wanted this concession because it needed the money and thought the suggestion was fair (R. 253-256, 276-278).

The California Central Railroad desired its car hire on a demurrage basis so that the industry which owned it and which it served, could compete with similar industries located on the lines of its connection. This would

permit it to use non-owned freight cars without any payment. At the same time, it was not willing to give up the divisions of joint rates which it was receiving (R. 534, 535). The Natchez, Columbia & Mobile Railroad asked for five days' free use of non-owned freight cars which would relieve it of all obligation to pay any car hire. It had become a subscriber in order to get reclaim and per diem on cars owned by it but did not feel that it should allow free time on its own cars. It justified its free use of non-owned cars in line-haul traffic by a reference to switching reclaim; by the fact that its revenues were small, and because it delivered its original traffic to its connections (R. 605-614).

The Ozark Southern Railroad frankly said that it desired to pay nothing for the use of freight cars belonging to other railroads, taking the position that it gathered traffic for the St. Louis-San Francisco, its connection; that its own line was short and that the St. Louis-San Francisco ought to sacrifice something (R. 400-402). The Belfast & Moosehead Lake Railroad desired the free use of non-owned freight cars in order to keep the railroad going, saying that it should be treated as an industry (R. 187, 188). The Marinette, Tomahawk & Western Railroad wished to be treated as an industry so far as car hire was concerned, but was willing to pay car hire if its divisions were sufficiently increased (R. 395-400).

The Pickens Railroad asked for two days' free use of non-owned freight cars and urged the allowances made by the Railroad Administration as a precedent therefor (R. 712-716). The Hampton & Branchville Railroad wanted three days' free use of non-owned cars, because it originated a substantial amount of tonnage and felt that its divisions were not sufficiently high. This road had actually received an increase in its divisions, based partly on the car hire it was paying (R. 739-744). The

Magma Arizona Railroad wished to be treated as a shipper so far as car hire was concerned, and urged its lack of revenue in justification thereof (R. 510-515).

This testimony is representative of all the testimony in which the free use of non-owned freight cars in line haul traffic was requested. The reasons for the requests, assigned in that testimony, together with the conceded fact that some such allowances had been made by subscriber railroads in violation of the Per Diem rules, constitute the entire basis of fact in the record justifying the conclusions reached in the first part of Paragraph (5).

In considering the validity of the requirements of Paragraph (5), there are certain fundamental facts to be borne in mind. The railroads which will be entitled to the free use of freight cars belonging to other railroads are common-carrier railroads just as appellants are common-carrier railroads, and as such are subject to the same obligations and entitled to the same rights. One of their obligations is to own or furnish an adequate supply of cars in which to haul their own traffic. *Chicago, Rock Island & Pacific Railway* v. *Hardwick Elevator Company*, 226 U. S. 426; *Pennsylvania Railroad Co.* v. *Puritan Coal Co.*, 237 U. S. 121; *Illinois Central Railroad Co.* v. *Mulberry Hill Coal Co.*, 238 U. S. 275; *Pennsylvania Railroad Co.* v. *Sonman Coal Co.*, 242 U. S. 120.

This is a fundamental rule of law, and the Commission itself has applied it in many cases. In *Virginia Blue Ridge Railway* v. *Southern Railway Company*, 96 I. C. C. 591, there was a specific request by complainant that it be permitted to use non-owned freight cars at the expense of the Southern Railway. In denying the prayer of the petition, the Commission said at page 593:

> "As a common carrier participating in joint rates, complainant is under an obligation to furnish its

share of the equipment. This it may do either by purchase or rental. The per diem that complainant pays for car hire is merely equivalent to interest, depreciation, insurance, taxes and other car-ownership costs which it would have to bear if it owned the cars used in interline traffic. The car owner incurs these costs in the first instance, and is reimbursed by complainant through the per diem or rental charges, thereby relieving the latter of the necessity of investing in equipment for this service."

This conclusion was adhered to and followed in *Western Pine Lumber Company* v. *Director General*, 96 I. C. C. 625; *Morehead & North Fork Railroad* v. *Chesapeake & Ohio Railroad*, 100 I. C. C. 45; *Jefferson & Northwestern Railroad* v. *Missouri-Kansas-Texas Railroad Co.*, 102 I. C. C. 72; *Chaffee Railroad* v. *Carriers*, 102 I. C. C. 53; and *M. & O. L. Railway* v. *N. Y. C. R. Co.*, 104 I. C. C. 389. And in *Coal from Sewell Valley Railroad Stations*, 58 I. C. C. 261, referred to at page 399 of the Commission's first report (R. 47), the Commission required the Sewell Valley to equip itself with that proportion of coal cars which it was supposed to own.

In the hearings before the Commission, counsel for the American Short Line Railroad Association made the following statement (R. 138):

"That as a general rule the Short Line Association agrees that the short line as a car user should pay the equivalent of interest, depreciation, taxes and other car ownership costs that it would have to pay if it owned its just share of the cars used in interline traffic."

And, as we have pointed out, in Finding 1 in its first report (R. 92), the Commission itself specifically recognized the right of all common-carrier railroads, including appellants, to receive compensation for the use of their cars by other railroads at the rate of $1 per car per day. This is in keeping with its decision in *Morehead &*

North Fork R. Co. v. *C. & O. R. Co.*, 100 I. C. C. 45, where it is said at page 48:

> "It is a fundamental principle that a car owner is entitled to adequate compensation for the use of his car by another carrier."

Notwithstanding the law and these facts, the first part of Paragraph (5) permits the use of freight cars belonging to appellants and other railroads similarly situated, in line-haul traffic, without compensation, or adequate compensation, or requires such railroads to expend their money in paying the car hire expenses of certain of their connections. As in the case of Paragraphs (2) and (3) of the order, it is impossible to definitely determine the reasons because of which the Commission reached this conclusion. Although its first report includes a lengthy discussion of the reasons assigned by individual railroads in support of the requests made by them, none of these reasons justify the requirement of the first part of Paragraph (5).

At page 387 of its first report (R. 35), reference is made to the expenses incurred by the so-called short lines in handling their traffic. As we have pointed out, appellants sustain precisely the same expenses and handle their traffic under the same conditions. They may receive a longer haul on some traffic but on much of it they do not. And in any event, the charges collected by such "short lines" are presumed to compensate them for their expenditures in furnishing equipment. The Commission has so held. *Demurrage on Coal, etc.*, 102 I. C. C. 554, 557.

At the same page of the first report (R. 35), reference is also made to the two days' free use of cars allowed by the Railroad Administration during Federal control. As we have pointed out, this allowance was made by the Director General in return for a waiver of claims

against him so that he received value for what he gave. In this case appellants and other railroads similarly situated will receive nothing. What was done by the Director General is not a good precedent.

In discussing the situation of individual roads, at pages 387 to 390 of its first report (R. 35-38), the Commission indicates that the railroads there referred to were not making enough money to justify a requirement that they pay for non-owned freight cars used by them. This is scarcely a reason for imposing this expense upon the connecting lines of such roads. Car hire is an operating expense as local to each railroad as amounts expended for rail, ties, and wages of employees. If a railroad's total revenue is insufficient to pay all of its expenses, the Act to Regulate Commerce specifies a number of methods by which that revenue may be increased. Rates or divisions may be increased. There is, however, no provision of the Act which permits an increase in the net revenue of a railroad through the requirement that its operating expenses be directly paid by its connections.

At page 391 of its first report (R. 39) the Commission refers to the fact that some subscriber railroads have heretofore allowed the free use of non-owned freight cars in line-haul traffic by certain of their connections, in violation of the Per Diem Rules. This fact, however, does not justify the requirements of Paragraph (5). At most, this circumstance could only create an unlawful discrimination. Such a discrimination was not proven on the record, and the Commission has not found that it existed. The free use of non-owned freight cars is permitted to certain carriers under Paragraph (5) because it is said to be reasonable. And even if the facts justified a finding of discrimination, it is required that appellants be given the right to remove it by discontinuing

their present allowances. *Great Northern Ry. Co.* v. *Minnesota, supra.*

At pages 392 and 394 of its first report (R. 40, 42), the Commission refers to the claim of some railroads that the free use of freight cars on line-haul traffic is analogous to the terminal switching reclaims permitted as between subscribers to the Per Diem Agreement. It is not certain that this alleged analogy moved the Commission to reach the conclusions expressed in Paragraph (5), but in any event the analogy does not exist. We have explained at length that terminal switching reclaim is a voluntary refund made by subscriber roads, in consideration of benefits moving to them, including the reciprocal right to reclaim. For terminal switching reclaim granted under the Per Diem rules, every subscriber road receives value. For the free use of non-owned freight cars granted by Paragraph (5), appellants and other railroads similarly situated will receive nothing.

Moreover, there is a justification for terminal switching reclaim, in that switching charges generally are not high enough to permit the payment of per diem without reclaim and they cannot practically be increased so as to permit such payment. On the other hand, line-haul traffic is handled either under local rates or divisions of joint rates, either of which may be increased, with the permission of the Commission, in the manner specified in the Interstate Commerce Act. There are no practical objections to doing this and it appears from the record that some roads had done it. The York Utilities Company, for example, increased its demurrage charges to cover per diem paid by it. Particularly, may divisions of joint rates be readjusted if the revenue of a railroad is insufficient. This court has already approved such readjustments in some cases. *New England Divisions*

Case, 261 U. S. 184; *Beaumont, Sour Lake & Western Railroad, et al*, v. *United States*, 282 U. S. 74.

The Commission itself has repeatedly recognized the essential difference between the free use of non-owned freight cars in line-haul traffic under local or joint rates, and switching reclaim. *Virginia Blue Ridge Railway* v. *Southern R. Co.*, 96 I. C. C. 591; *Western Pine Lumber Company* v. *Director General*, 96 I. C. C. 625; *Jefferson & Northwestern R. Co.* v. *M-K-T Ry.*, 102 I. C. C. 72; *Marcellus & Otisco Lake R. R.* v. *New York Central R. Co.*, 104 I. C. C. 389.

At page 394 of its first report (R. 42) the Commission refers to the claim that short railroads should be treated as shippers or consignees and point is made of the demurrage allowances to shippers and consignees of free time in which to load or unload shipments. Such a comparison overlooks the legal situation of a railroad and a shipper. Free time for loading or unloading is given a shipper or consignee because that is part of a common-carrier railroad's obligation to the public. The railroad receives its compensation therefore in the rates paid for freight transportation. Appellants and other railroads similarly situated have no such duty to other common-carrier railroads, and if they are required to allow such free time will receive no compensation for it. Moreover, it is to be assumed that the carriers benefitted under Paragraph (5) now receive compensation in their rates charged against the public, for any expenditures made by them in furnishing freight cars. The Commission so held in a case involving the precise issue. *Demurrage on Coal, etc.*, 102 I. C. C. 554, 557. Permitting them to use non-owned freight cars without payment is equivalent to increasing their rates at the expense of appellants and other railroads similarly situated.

On page 395 of its first report (R. 43), the Commission indicates that the free use of non-owned freight cars is allowed as a method of increasing the net revenues of some railroads which are financially unable to litigate a divisions case, and that the free use of such cars is a simpler and less expensive method of transferring revenue to short lines than establishing joint rates with divisions thereof. Such reasoning does not justify the requirements of Paragraph (5). As we have pointed out, the rates, revenues, expenses and financial condition of railroads were not issues in the proceedings before the Commission, and there was no evidence in the record sufficient to support a decision on these grounds. There were some statements by individual railroads that they were not making enough money to pay car hire, but on the other hand it affirmatively appeared that many others had sufficient revenue. The matter not being in issue no evidence of this sort was offered on behalf of appellants or other members of the American Railway Association.

There is no section of the Interstate Commerce Act which gives the Commission authority to adjust the distribution of revenue between railroads by an adjustment of car hire. Paragraph (6) of Section 15 (U. S. C. A., Title 49, p. 426) gives the Commission broad authority over the divisions of rates between carriers, but this investigation by the Commission was not instituted under that section of the law. And even if it had been, the record is not sufficient to sustain a transfer of revenue from appellants to other carriers, as it does not contain that evidence which the statute requires. *Brimstone Railroad Co.* v. *United States*, 276 U. S. 104.

The reasons urged as justifying the free use by some railroads of non-owned freight cars for coal loading were identical with those to which we have referred, except that two additional ones were advanced. One was that

Paragraph (12) of Section 1 of the Interstate Commerce Act required it (R. 814). That the Commission had this construction of the law in mind is obvious from the wording used in the latter part of Paragraph (5) of the order. It provides:

> "That no car hire need be paid on cars received for return loading with coal from coal mines which are customarily dependent upon connecting carriers for car supply."

This language is borrowed from Paragraph (12) of Section 1 of the Act, which requires every carrier by railroad to make a proper distribution of cars for the transportation of coal,—

> "among the coal mines served by it, whether located upon its line or lines or customarily dependent upon it for car supply."

This section of the Act, however, does not relate in any way to the matter of car hire as between railroads. It relates only to car distribution, a matter not here in issue. It was considered by this court in the *Assigned Car Cases*, 274 U. S. 564. As appears at pages 576 and 577 of this court's opinion in that case, three constructions of Paragraph (12) of Section 1 of the Act were urged upon this court. The Commission itself contended that the paragraph described a rule of car distribution, and its contention was upheld. Moreover, that case involved no question of payment for non-owned cars used. The only claim of confiscation was made by the private car owners, but the confiscation was claimed to result from the manner in which their cars were distributed among mines. At page 574 of this court's opinion it was said,—

> "Nor is any question presented here concerning the compensation of or allowance to private car owners for the use of their cars in performing the transportation under the tariffs."

A reading of the statute is demonstrative of the fact that it does not require any railroad to furnish its cars to a mine customarily dependent upon it for car supply but located on a connecting railroad, without charge against that connecting railroad for the use of the car. It is true that in *Ohio Farm Bureau* v. *Carriers,* 89 I. C. C. 489, and *Kanawha Black Band Coal Co.* v. *C. & O. Ry.,* 141 I. C. C. 433, the Commission relieved the Federal Valley Railroad and the Kanawha Central Railway from the obligation to pay per diem on coal cars, but in neither case was it held that Section 1 (12) of the Act authorized or required that decision.

In *Tioga Coal Company* v. *B. & O. R. R.,* 101 I. C. C. 611, referred to by the Commission at page 389 of its report (R. 37) the Commission did not consider the matter of car hire at all. That case involved nothing but car distribution, and the Commission held that since the railroad serving the mine had no cars, the Baltimore & Ohio was required to furnish cars for it under Paragraph (12) of Section 1 of the Act. The statement of the Commission that the matter of car hire was considered in this case is in error.

The second additional reason urged as justifying the free use by some railroads of non-owned cars for coal loading was that no demurrage is collected from shippers on empty coal cars placed at mines or held on mine sidings for billing (R. 904, 905). Thus, a coal originating railroad using non-owned cars for coal loading is obliged, under the Per Diem rules, to pay $1 per car for each day it has such cars, but is unable to recover any of this per diem through demurrage collections from shippers, so long as the cars are held at mines or on mine sidings.

Cars for coal loading are handled under Car Distribution Rules (R. 904). These rules apply to all carriers,

including appellants, and to the extent that they impose a burden upon railroads, they impose it upon appellants and other railroads similarly situated, to the same extent and in the same degree as upon those railroads which are given the free use of non-owned coal equipment under the latter part of Paragraph (5). The Commission itself has declined to permit any change in this situation.

In *Demurrage on Coal, etc.*, 102 I. C. C. 554, the Tennessee Railroad had filed a tariff making a demurrage charge against coal equipment held at mines, the charge being proposed as an offset to per diem paid on that equipment by the railroad. It was urged in justification of the charge that without it, the railroad paid as much or more in per diem on such cars as it received in freight charges. Referring to the proposed charge the Commission said at page 557:

> "It would have the effect of largely offsetting respondents' cost of car hire by assessing shippers an amount equal thereto beyond a certain time. Respondent is under obligation to furnish the equipment necessary for the transportation of traffic tendered to it, and if it does not possess such equipment the charges paid for the revenue thereof cannot be considered as an item of expense which is not included in the rate."

It then approved the application of the Car Distribution Rules and required the proposed tariff to be cancelled, saying at page 558:

> "The exception here proposed has no apparent purpose except to transfer respondent's car-hire expense to the coal operators."

Under the latter part of Paragraph (5), the same Tennessee Railroad has been permitted to transfer its car-hire costs to the Southern Railway, which has not been treated with the same consideration as the coal operators were treated.

A consideration of the evidence in the record of the proceedings before the Commission, demonstrates that it is insufficient to support the requirements of Paragraph (5) of the order. The evidence to which we have referred is typical and representative of all such evidence. We have referred to all reasons and arguments advanced by the witnesses as justifying the free use by some railroads of freight cars not owned by them. None of those reasons or arguments support or justify the Commission's conclusions as expressed in Paragraph (5).

The requirements of that paragraph violate fundamental rules of law. The paragraph relieves certain common-carrier railroads of their primary obligation to furnish their share of that equipment necessary in the transportation of freight. It confers upon those railroads rights which their counsel did not claim. It directly contradicts the principle announced in Finding 1 in the Commission's first report and denies to appellants the right recognized and asserted in that Finding. It goes far beyond the authority conferred upon the Commission by Section 1 (14) of the Act, which contemplates the payment of some compensation by every railroad which uses the freight cars of another railroad.

It has the direct and unavoidable effect of either taking appellants' cars without compensation or upon payment of a compensation less than that found reasonable by the Commission, or of requiring appellants to pay the car hire bills of other railroads, incurred in the operation of those railroads. And for these losses and expenditures, appellants will receive nothing, in money, service or otherwise. Neither the reports or order of the Commission suggest that any advantage will result to appellants to compensate them for the losses imposed upon them by Paragraph (5). The requirements of that paragraph plainly violate the rules of law laid down by

this court in *Reagan* v. *Farmers L. & T. Co., supra,* in which this court said at page 399:

"the machinery of government with all their reach and power, must, in their actual workings, stop on the hither side of the unnecessary and uncompensated taking of any private property legally acquired and legally held."

The precise requirement of Paragraph (5) of the order was passed upon by this court in *Louisville & Nashville Railroad* v. *Stock Yards,* 212 U. S. 132. This case involved the validity of a provision of the Constitution of the State of Kentucky, which, as construed by the Kentucky courts, required the Louisville & Nashville Railroad to interchange its cars with other carriers, but made no provision for compensation to be paid by such other carriers to the Louisville & Nashville for the use made by them of those cars. In sustaining the attack made on this requirement of the statute, this court said at pages 143 and 144:

"It was argued, however, that the requirement that the plaintiff in error should deliver its own cars to another road was void under the Fourteenth Amendment as an unlawful taking of its property. In view of the well known and necessary practice of connecting roads, we are far from saying that a valid law could not be passed to prevent the cost and loss of time entailed by needless transshipment or breaking bulk, in case of an unreasonable refusal, by a carrier to interchange cars with another for through traffic. We do not pass upon the question. It is enough to observe that such a law perhaps ought to be so limited as to respect the paramount needs of the carrier concerned, and at least could be sustained only with full and adequate regulations for his protection from the loss or undue detention of cars, and for securing due compensation for their use. The constitution of Kentucky is simply a universal undiscriminating requirement, with no adequate provisions such as we have described. The want cannot be cured by inserting them in judgments

under it. The law itself must save the parties' rights, and not leave them to the discretion of the courts as such. (Citing cases.) It follows that the requirement of the state constitution cannot stand alone under the Fourteenth Amendment, and that the judgment in this respect also, being based upon it, must fall."

The Commission has gone much further than the State of Kentucky did. It has not only failed to provide compensation to appellants for the use of their freight cars by other railroads, but has specifically prohibited the recovery of such compensation. Such a prohibition clearly violates the law with respect to confiscation of property, as announced in the cases we have cited.

Appellants only ask that there be secured to them the right to receive compensation when their cars are used by other railroads, that compensation to be at the rate of $1 per car per day, the amount found proper by the Commission. With this compensation secured to them, appellants concede their obligation to permit the use of their cars by other railroads. Since they are legally entitled to such compensation, and since Paragraph (5) of the order denies it to them without justification in law or in fact, we submit that that paragraph of the order should be set aside as arbitrary and unreasonable and as taking the property of appellants without due process of law and without compensation, in violation of their constitutional rights.

(d) The evidence to which we have referred is representative of all evidence upon which Paragraphs (2), (3) and (5) of the Commission's order must have been predicated. Unless the Commission considered facts not in the record, which would certainly require that its order be set aside, *United States* v. *Abilene & Southern R. Co.*, 276 U. S. 104, the justification in fact for what it has done must be found in such evidence. As we have pointed

out, it is impossible to definitely determine from anything contained in the Commission's reports and order, just what moved it to reach the conclusions expressed in Paragraphs (2), (3) and (5) of its order.

While it did include nine findings in its first report (R. 92, 93), these findings are no more than a statement of conclusions reached. The Commission seems to have fallen into the error referred to by this court in *Beaumont, Sour Lake & Western Railway Company* v. *United States,* 282 U. S. 74, 86, and *Florida* v. *United States,* 282 U. S. 194, 215. There is a complete lack of those basic or essential findings which are required to support its order. Its reports are nothing but a recital of the various contentions and arguments advanced by different witnesses, no findings of fact being reached as a result of the discussion of those contentions.

It may be said however, from a consideration of all the statements contained in the Commission's reports, that it was much moved by the alleged financial inability of short railroads to pay for their use of non-owned freight cars, and the many statements that the trunk lines, such as appellants, should be required to afford them some financial relief. This thought is continuously present throughout the entire discussion of evidence in the Commission's first report, the general atmosphere of the report being that the trunk lines had arbitrarily imposed hardships upon shorter railroads and treated them improperly. Accompanying this thought there is a constant suggestion that the financial burden said to rest upon such short railroads, should be cast upon the connecting carriers of those railroads.

As illustrative of this atmosphere, we refer to the language on page 377 of the Commission's first report (R. 25) in which the alleged disadvantages of associate members of the American Railway Association are dwelt

upon; to the language on page 387 of the Commission's first report (R. 35) in which reference is made to the disabilities of the so-called "short lines" as compared with their trunk line connections; to the discussion of individual railroads at pages 388 to 390 of the Commission's first report (R. 36-38) in which the car-hire charges of those railroads and their claimed inability to pay them are stressed; to that language on page 392 of the Commission's first report (R. 40) in which reference is made to the "losses" imposed upon short railroads by the refusal of the trunk lines to allow such railroads the free use of non-owned freight cars; to the language on page 394 of the Commission's first report (R. 42) in which it is indicated that trunk lines have an obligation to give shippers, consignees and short railroads the same treatment, and that they will lose no money by so doing; to the language on page 395 of the Commission's first report (R. 43), in which it is indicated that allowing short railroads the free use of non-owned freight cars is a better method of transferring revenue to them than establishing joint rates and divisions thereof; to the language on pages 399 and 400 of the Commission's first report (R. 47-48) in which reference is made to the accounting burdens said to be imposed upon short railroads under the Per Diem rules; and to the language at the top of page 399 of the Commission's first report (R. 47) in which the Per Diem rules of the American Railway Association are made to appear as arbitrary and improper enactments.

All these circumstances justify the conclusion that what the Commission was trying to do in this case was effect a redistribution of revenue as between common-carrier railroads. Certainly, this is what the Commission has done. It apparently concluded that certain carriers needed financial relief; that other carriers should

be required to furnish such relief, and that this financial relief could be appropriately extended to the carriers in need of it through a readjustment of car-hire expense. If this was the theory upon which the Commission acted in disposing of the case, as it appears to be, Paragraphs (2), (3) and (5) of the order must be set aside for a number of reasons.

Per diem paid by a carrier does not have the same legal status as rates and divisions received by it. The Commission has so held. In *Marcellus & Otisco Lake Railway* v. *New York Central R. Co.*, 104 I. C. C. 389, the contention made by complainant was that Paragraphs (a) and (b) of Section 208 of the Transportation Act, 1920, which prohibit any change in rates and divisions effective at the termination of Federal control, without permission or agreement, also prohibit any change in per diem charges without the same permission or agreement. This contention the Commision overruled, saying at page 391 of its report:

> "But the present controversy is one between carriers with respect to per diem charges, whereas the rates, fares, or charges contemplated by the statute plainly have reference to rates, fares or charges collected from the public, and section (b) simply has reference to the divisions of such charges between participating carriers."

As we have pointed out, the rates, divisions, financial condition and operating expenses of the railroads were not an issue in the proceedings before the Commission. They were not made issues by the order instituting the investigation and it was repeatedly ruled upon the hearings that they had no place in the case. For this reason appellants introduced no evidence to show the volume of their divisions and rates, the service performed thereunder, their financial condition, their operating conditions or expenses or any other fact which would have

been important in a divisions or revenue case. Had they known or been advised that their financial condition was of importance, they could undoubtedly have shown that relatively, they were in no better financial condition than short railroads, and were no better able to sustain the expenditure required to furnish freight cars in which to move their traffic. But even though appellants and other railroads similarly situated receive sufficient revenue from various sources to pay the car hire expenses of some railroads, this fact would not justify a requirement that they make the payments. In *C. M. & St. P. R. Co.* v. *Commission,* 274 U. S. 344, this court said at pages 350 and 351:

> "The state has no power to require petitioners to haul the logs at a loss or without compensation that is reasonable and just, even if they receive adequate revenues from the intrastate log haul and interstate lumber haul taken together."

To the same effect are the decisions of this court in *Brooks-Scanlon Co.* v. *Commission,* 251 U. S. 396, 399; and *C. M. & St. P. Ry.* v. *Wisconsin,* 238 U. S. 491, 500.

The witnesses for some short railroads did state their conclusion that their companies did not have sufficient revenue with which to pay car hire, but this evidence was scattering and was not given with respect to all such railroads.

In this state of the record, the effort of the Commission to effect a redistribution of revenue between railroads under the guise of a regulation of car hire, cannot be sustained. It attempted to do substantially the same thing in *Baltimore & Ohio Railroad* v. *United States,* 277 U. S. 291. In that case the question was whether or not the east-side or west-side carriers at St. Louis-East St. Louis should pay the charges for the transfer of freight across the Mississippi River at those points. Those

charges had always been paid by the west-side lines, but the Commission, under the guise of prescribing a reasonable practice, required that on certain traffic they be paid by the east-side lines. At page 298 this court said:

> "The matters in controversy in both proceedings were purely financial. There was no question concerning furnishing of facilities or the handling of traffic."

This is also true in the case at bar, as there was no issue before the Commission with respect to the furnishing or distribution of cars, the transportation of freight in those cars, or the rates to be charged for such transportation. The only change made by the order is a financial one. In the case cited, this court said at page 299, after stating that the tariffs of the east-side lines applied only to and from East St. Louis, and that all their revenue was retained by them:

> "But the Commission's order requires the rates, so by tariff provisions limited to East St. Louis, to be extended to St. Louis. This operates to deduct the cost of transfer from their revenue. In effect it is to require the cancellation of such tariff provisions, and to authorize a corresponding change in the tariffs of the appellee lines. It results that the controversy before the Commission involved divisions or apportionments of revenues derived from through traffic."

The same effect is produced by the Commission's order in the case at bar. Appellants and other railroads similarly situated had in effect rules under which they preserved their revenue by declining to allow other railroads to use their cars without the payment of compensation in some form. The Commission's order requires such changes in those rules as will require a deduction from the income of appellants and other railroads similarly situated, with a corresponding increase in the net

revenue of the railroads benefitted thereby. At page 300 of its opinion in the case cited, this court said:

> "Paragraph (6) of Sec. 15 empowers the Commission to prescribe divisions of joint rates, but there must be evidence adequate to justify action, *Brimstone Railroad & Canal Co.*, v. *United States*, 276 U. S. 104. *United States* v. *Abilene & Southern Ry. Co.*, 265 U. S. 274. *New England Divisions Case*, 261 U. S. 184. That rule may not be avoided by a broad construction of the word 'practice.' The record here contains all the evidence that was submitted to the Commission. Its report shows that 'the propriety of divisions was not the subject of inquiry and investigation.'"

The same situation obtained in the case at bar. The record in this case contains all the evidence submitted to the Commission. It is clear that the rates, divisions and financial condition of the railroads was not the subject of inquiry. Nevertheless, under the guise of regulating car hire between railroads, the Commission has sought to avoid the rule governing the fixing of divisions, and has entered an order, the only effect of which is to require a transfer of revenue from appellants and other railroads similarly situated to those railroads benefitted by Paragraphs (2), (3) and (5) of its order.

At page 300 of its decision in the case cited, this court said, referring to the rates of the west-side lines:

> "There is a strong presumption that the general level of their rates has been adjusted to include reasonable compensation for the services covered by them."

So, in the case at bar, there is the same presumption that the rates of the railroads benefitted under Paragraphs (2), (3) and (5) of the order have already been adjusted so as to compensate them for any amounts expended by them in the payment of car hire. The Commission has specifically so held in one case. *Demurrage*

on Coal etc., 102 I. C. C. 554. Finally, at pages 301 and 302 of its opinion in the case cited, this court said:

> "The merits of the changes made by the order cannot be determined without a consideration of facts substantially similar to those specified in paragraph (6) of Sec. 15 relating to the division of joint rates. The case was not presented by complainants or considered by the Commission on that basis. There was no evidence to show the amount of revenue required to pay operating expenses, taxes and a fair return on the property of appellee lines or that their rates were not adjusted or were not sufficient to cover the transfer charges in question. There was nothing to support a finding that it is or will be unjust or unreasonable for the appellee lines to bear the cost of transfer of the westbound through traffic. The order cannot be sustained. *Florida East Coast Ry.* v. *United States*, 234 U. S. 167. *Louis. & Nash. R. R.* v. *United States*, 238 U. S. 1."

This language also applies to the case at bar. The record made in it does not contain evidence with respect to the facts specified in Paragraph (6) of Section 15 of the Act. The case was not presented to or considered by the Commission as a revenue or divisions case. The only effect of the order entered is to transfer revenue from appellants and other railroads similarly situated to certain of their connecting lines. There is no evidence in the record which supports the Commission's findings that it is unreasonable for every railroad to pay its own car-hire and car-accounting expenses. Indeed, there could not be, for the obligation of every common carrier to pay its own operating expenses is a necessary incident of its operation, and no evidence could justify a requirement that such expenses of a railroad must be paid by another railroad.

We submit that since the record does not support the requirements of Paragraphs (2), (3) and (5) of the order, those paragraphs should be set aside.

IV.

THE CLASSIFICATIONS OF RAILROADS MADE BY THE COMMISSION'S ORDER ARE ARBITRARY AND UNREASONABLE AND ARE NOT SUPPORTED BY ANY EVIDENCE IN THE RECORD OF THE PROCEEDINGS BEFORE THE COMMISSION.

As we have heretofore pointed out, each paragraph of the Commission's order creates a classification of railroads, and the classification created by each paragraph is different from that created by every other paragraph. We are aware of those decisions of this court in which classifications of certain sorts have been approved, but submit that these cases do not justify what the Commission has done in the case at bar. We may refer to a few of them to illustrate our argument.

One line of cases upholds the right of states to fix passenger rates varying with the length of the line. Thus, in *Dow* v. *Beidelman*, 125 U. S. 680, this court sustained a statute of the State of Arkansas fixing rates for passenger transportation varying from 3 cents a mile to 8 cents a mile on railroads ranging from 15 miles or less in length to 75 miles or more in length. This classification of railroads was sustained because, as stated by this court at page 691 of its opinion:

> "The legislature, in the exercise of its power of regulating fares and freights, may classify the railroads according to the amount of the business which they have done or appear likely to do. Whether the classification shall be according to the amount of passengers and freight carried, or of gross or net earnings during a previous year, or according to the simpler and more constant test of the length of the line of the railroad, is a matter within the discretion of the legislature. If the same rule is applied to all railroads of the same class, there is no violation of the constitutional provision securing to all the equal protection of the laws."

A similar statute was sustained in *Chesapeake & Ohio Railway* v. *Conley*, 230 U. S. 513. The statute there involved had been enacted by the State of West Virginia and prescribed certain passenger fares to be applied by the railroads doing business in that state, with the proviso that the Act should not apply to a railroad less than fifty miles in length and not a part of any other railroad over fifty miles in length. This court sustained the validity of the statute on the ground that the classification of railroads made by it was not unreasonable or arbitrary, citing *Dow* v. *Beidelman, supra.* In these cases the controlling circumstance seems to have been the undoubted right of a state to exercise a control over railroads operating within its borders. Such holdings are consistent with other decisions of this court to which we have referred and which have uniformly sustained the exercise by a state or municpality of the police power resident in it, provided its action is not clearly arbitrary or unreasonable.

Another line of cases is that relating to the validity of statutory requirements calculated to produce safety to passengers upon railroads. *New York, New Haven & Hartford Railroad* v. *New York*, 165 U. S. 628 is such a case. The statute of New York, the validity of which was there sustained, prohibited the use of certain methods of heating passenger cars, with the proviso that the Act should not apply to railroads less than 50 miles in length. This court held (pp. 631, 633) that the object of the statute was to protect persons traveling on passenger cars in the State of New York against the perils resulting from heating passenger cars in a particular manner, and in dealing with the classification of the statute said at page 634:

> "In any event, there is no such discrimination against companies having more than fifty miles of

road as to justfy the contention that there has been a denial to the companies named in the act of the equal protection of the laws. The statute is uniform in its operation upon all railroad companies doing business in the State of the class to which it is made applicable."

In *C. R. I. & P. Ry.* v. *Arkansas*, 219 U. S. 453, there was involved a law of Arkansas which prohibited every railroad from operating freight trains on its lines in the state with a crew consisting of less than six designated employes, with the proviso that the Act should not apply to railroads less than fifty miles in length or to any railroad, in case the freight train consisted of less than twenty-five cars. This court sustained the validity of the statute after a reference to a number of similar cases, including *New York, New Haven & Hartford R. Co.* v. *New York, supra.* It was held that the State of Arkansas was obliged to establish regulations necessary for the safety of its citizens, and that statutes directed to such an end have their source in the power of a state of caring for the public safety of those within its jurisdiction. It was further said that such enactments must be sustained unless inconsistent with some Federal right or unless purely arbitrary in their nature.

In *St. L. & I. M. & S. R. Co.* v. *Arkansas*, 240 U. S. 518, a statute of Arkansas which required railroads to use six delegated employes in their switching operations, but did not apply to railroads less than 100 miles in length, was sustained principally on the authority of *C. R. I. & P. Ry.* v. *Arkansas, supra.* In this case also the enactment was sustained as a measure of public safety. In *Wilson* v. *New*, 243 U. S. 332, the exemption of certain short line and electric railroads from the operation of the so-called Adamson law was held not to invalidate that enactment principally on the authority of the cases to which we have referred. In the case at bar

there is no question of public safety nor of any other direct public interest. Nor is there any question of the power of a state to regulate its purely domestic concerns.

In the cases to which we have referred, this court, while sustaining the statutes there involved, held that even those regulations calculated to secure public safety or enacted in the exercise by a state or other local authority of a jurisdiction resident in it, must be reasonable and not arbitrary and that they must operate with some degree of uniformity.

Thus, in *Dow* v. *Beidelman, supra,* this court said at page 691:

> "If the same rule is applied to all railroads of the same class, there is no violation of the constitutional provision securing to all the equal protection of the laws."

And in *N. Y. N. H. & H. R. Co.* v. *New York, supra,* this court said at page 634:

> "The statute is uniform in its operation upon all railroad companies doing business in the State of the class to which it is made applicable."

And in *C. R. I. & P. Ry.* v. *Arkansas, supra,* this court said at page 466:

> "And the statute being applicable alike to all belonging to the same class, there is no basis for the contention that there has been a denial of the equal protection of the laws."

We submit that the cases cited and others to the same effect, are not authorities which justify the classifications created under the Commission's order in this case. The classes of railroads created by the various paragraphs of the order have no relation to each other. No uniform method has been followed in determining each class and there appears to be no consistent reason for including any railroad in any particular class.

Above all things, the order leaves certain railroads, including appellants, to sustain the duties and obligations imposed upon them by law when they became common-carrier railroads, but undertakes to relieve other railroads of certain of those obligations by imposing them upon appellants and other railroads similarly situated. Such a classification of railroads, one class consisting of railroads which must sustain more than their legal obligations and another class consisting of railroads which are relieved of certain of these obligations, is surely beyond the Commission's power.

The railroads which, under Paragraphs (1) and (5) receive per diem but are not obliged to pay it, are in the same situation as to mileage, and other circumstances, as many railroads which receive per diem and also are obliged to pay it. Thus, the Gainesville Midland Railroad, a subscriber road 74 miles long and owning four freight cars (p. 1, Ex. 40; R. 1168a), receives per diem on its cars and the free use of non-owned cars, but the Columbia, Newberry & Laurens Railroad, a subscriber road 75 miles long and owning 56 cars (p. 2, Ex. 40; R. 1168b), receives per diem and also pays it. The distinction between such roads depends upon their ability to return non-owned freight cars to the subscriber connection from which they were received.

The classification created by Paragraph (2) depends entirely upon subscription to the Per Diem Agreement of the American Railway Association, a private agreement between railroads, the length of line and method of handling cars being of no consequence. Under Paragraph (3) the classification again depends upon length of line and methods of handling cars. The classification created by Paragraphs (4) and (5) again depend upon length of line and a somewhat different method of handling cars.

In all the decisions of this court to which we have referred, the enactments there under consideration showed a connection between cause and result. Thus, as suggested by this court in *N. Y. N. H. & H. R. Co.* v. *New York*, *supra*, the exception of roads less than 50 miles in length from the operation of the statute involved was due to the lesser danger incurred in traveling on such lines.

But what connection is there between the length of a railroad or its ability to return freight cars to the railroad from which they were received and the right to impose its car-hire and car-accounting expenses upon its connecting lines? Obviously there is none. No where does it appear in the reports and order of the Commission that the distinctions between railroads under the order are due to any legitimate cause or result from any particular mode of reasoning. So far as appears from the record and from the reports of the Commission, the classifications decided upon are purely arbitrary.

Moreover, in every case decided by this court, the railroads included in any class have been capable of exact ascertainment. This is not true under the order herein attacked. The membership of some classes is dependent upon the ability of railroads to return all freight cars to the connection or to the subscriber connection from which they were received, and the status of such railroads will, therefore, vary from time to time. Nor is there any uniform distinction between railroads because of their length. Many railroads less than 100 miles in length will be required to be treated in the same fashion as railroads of greater length, while other railroads less than 100 miles in length will receive concessions.

Nor can the classifications created by the Commission be justified as uniformly benefitting railroads in poor financial condition, since the order will not so operate.

Many railroads which need no financial assistance will receive it under the order; while others not so well off will not receive it. Even the rights given to a certain class under the Commission's order are not uniform. Under Paragraph (5) a designated class of railroads is given the free use of non-owned freight cars. Part of them, however, will receive only two days' free use of such cars for each loaded car interchanged, while the others will pay nothing for their use of such cars. In this instance, the distinction between railroads is based upon the use to which non-owned freight cars are to be put.

In view of the lack of any uniformity, definiteness and reason in the making of the classifications which result from the order, it may only be concluded that those classifications are arbitrary and unreasonable and have no relation to whatever objects were sought to be accomplished.

The situation presented is somewhat similar to that presented in *Adair* v. *United States*, 208 U. S. 161. In that case, an attack was made upon an Act of Congress prohibiting any common carrier from requiring any employee, as a condition of employment, not to become or remain a member of a labor organization, and prohibiting any unjust discrimination against an employee because of his membership in such an organization. At page 169 the court observed that while the Act prohibited discrimination against a member of a labor organization, it did not prohibit such discrimination against the non-member. After a considerable discussion of the constitutional rights of railroads under the Fifth Amendment and the right of Congress to regulate interstate commerce, the court said at page 178:

> "Manifestly, any rule prescribed for the conduct of interstate commerce, in order to be within the

> competency of Congress under its power to regulate commerce among the States, must have some real or substantial relation to or connection with the commerce regulated. But what possible, legal or logical connection is there between an employee's membership in a labor organization and the carrying on of interstate commerce?"

There is certainly no more relation between the results of the classifications created by the Commission's order and the carrying on of interstate commerce than there is between a railroad employe's membership in a labor organization and the carrying on of that commerce. The order of the Commission here attacked does not affect the carrying on of interstate commerce in any way. It only relates to the private relations between railroads with respect to the accounting and payment for non-owned freight cars used. On pages 179 and 180 of the decision in the case cited, this court said, referring to the right of Congress to enact the law:

> "If such a power exists in Congress it is difficult to perceive why it might not, by absolute regulation, require interstate carriers, under penalties, to employ in the conduct of its interstate business *only* members of labor organizations, or *only* those who are *not* members of labor organizations—a power which could not be recognized as existing under the Constitution of the United States. No such rule of criminal liability as that to which we have referred can be regarded as, in any just sense, a regulation of interstate commerce. We need scarcely repeat what this court has more than once said, that the power to regulate interstate commerce, great and paramount as that power is, cannot be exerted in violation of any fundamental right secured by other provisions of the Constitution. *Gibbons* v. *Ogden*, 9 Wheat, 1, 196; Lottery Case, 188 U. S. 321, 353."

This language also has application in the case at bar. If the Commission has power to classify railroads in such fashion that certain railroads at one time or an-

other will be relieved of certain of their operating expenses and those expenses imposed upon certain other railroads, why may it not require that all expenses of certain railroads be paid by others? Such a requirement would certainly not be sustained and yet it logically follows.

The Commission may have the power to classify railroads for legitimate purposes. We submit, however, that such classifications, if created, must not be in violation of the law; must bear some logical relation to the result sought to be accomplished; must have some degree of uniformity in their application; must not create or cause to be created a discrimination between railroads; must not be arbitrary or unreasonable, and must be supported by substantial evidence. The classifications created by the order here involved meet none of these requirements.

They result in a violation of fundamental law, in that they confiscate the property of appellants and other railroads similarly situated, without justification or reason therefor. From the character of the classifications, it is evident that they bear no logical relation to any legitimate object. Their only purpose seems to be to effect a transfer of revenue as between railroads, a manifestly improper purpose in this proceeding. They create inequalities and discrimination as between railroads, since they confer rights upon some railroads while denying those rights to other railroads under similar circumstances. They are arbitrary and unreasonable, since without reason they classify carriers according to standards which vary in the case of each class and which are not fixed or capable of definite ascertainment. They are not supported by the evidence, since the only justification for them lies in the requests of individual witnesses that the railroads represented by them be given the benefits which the order now confers upon them.

Conclusion.

As we have said, the order of the Commission does not undertake to establish a complete set of rules to govern car-hire settlements between all common carrier railroads. While the Per Diem Code of the American Railway Association contains twenty rules, to say nothing of the Reclaim Rules and the Car Service Rules, the order of the Commission only affects a few of these rules. Per Diem Rule (1) is condemned in so far as it requires the payment of per diem by subscriber railroads less than 100 miles in length and which return all non-owned freight cars used by them to the subscriber connection from which they were received.

Per Diem Rules (5) and (6) are condemned in so far as they prohibit reclaim to nonsubscriber railroads. Per Diem Rule (6) is also condemned in so far as it prohibits the free use of non-owned freight cars in line-haul service by nonsubscribers. Per diem Rules 9, 10 and 11 are condemned in so far as they require subscriber railroads less than 100 miles in length to report all non-owned freight cars used by them directly to the owners of such cars. The resolution of the American Railway Association passed on November 16, 1915, and attached to Per Diem Rule (18), is condemned in so far as it recommends the payment by subscriber roads of mileage instead of per diem for their use of freight cars belonging to nonsubscriber roads.

In all other respects, the Commission's order presumably leaves the Per Diem Code of the American Railway Association in effect as between all subscribers thereto. So far as nonsubscribers are concerned, they are only required to comply with that Code if they are more than 100 miles in length or fail to return all non-

owned freight cars used by them to the subscriber connection from which they were received, in which event they are required to make reports and pay per diem in accordance with the provisions of the Code.

The Per Diem Code of the American Railway Association, in so far as it requires all railroads to report for non-owned freight cars used by them and pay per diem for such cars, does nothing more than require all common-carrier railroads to live up to the obligations imposed upon them by law. It goes no further than this. Every common-carrier railroad is required to furnish equipment in which to transport its own traffic, either by purchasing it or by renting. If such equipment is rented, the lawful obligation of the renting carrier is to make proper reports and payments direct to the railroad owning such equipment.

In Paragraphs (2), (3) and (5) of its order the Commission has condemned rules with respect to car hire which are only a statement of every railroad's legal duty, and in substitution therefor has prescribed rules which relieve certain railroads of obligations inherent in their status as common carriers. In addition, those paragraphs violate the constitutional rights of appellants and other railroads similarly situated.

This has not been done to cure any definitely found violation of law, nor to produce an equality with respect to car hire between all railroads in the country, nor because of any compelling testimony in the record. Paragraphs (2), (3) and (5) of the order are not justified by any of these considerations. It has presumably been done only because the Commission thought that it should be done. The record contains no evidence which may be said to support the action taken. Instead of producing equality and equal treatment as between railroads, the order creates inequalities and requires unjustified differences in treatment. It serves no public inter

whatsoever. The only logical conclusion that may be reached is that the order was entered in an effort to transfer revenue from certain railroads to other railroads, in disregard of the issues made by the order instituting the investigation and the evidence.

The claims of appellants now urged to this court were urged to the Commission and it was fully advised of our position with respect thereto. On the first hearing before the Commission, counsel for the American Railway Association made the statement that the owner of a freight car was entitled to receive proper compensation for its use by another railroad, and that that right could not be taken away from it or abrogated; that the right of the owner to receive that compensation would not be affected by the fact that the using line might not be receiving sufficient compensation for the service it performs (R. 162, 163). In the petition for rehearing filed with the Commission (Part of Ex. 1 certified to this court) the invalidity of the order on the ground that it violated the constitutional rights of the trunk line members of the American Railway Association, including appellants, was specifically urged.

We submit that in this case no distinction can be made between railroads because of their subscription or non-subscription to the Per Diem Agreement of the American Railway Association or because of their length of line, ownership of cars or financial condition. Their substantive legal rights are not affected by these considerations. And although we have discussed the evidence at some length and the possible reasons which may have moved the Commission to make the order attacked, we submit that no evidence and no reasoning could justify that order. It is not a legitimate exercise of the Commission's power to regulate. It produces an arbitrary confiscation of appellants' property, in violation of their fundamental constitutional rights. It dis-

regards all rights of ownership in private property. It departs from well-established and accepted rules of law, which are superior even to the jurisdiction of the Commission. As was said in the *Knoxville Water Company Case*, 212 U. S. 1, at page 18:

> "Our social system rests largely upon the sanctity of private property, and that state or community which seeks to invade it, will soon discover the error in the disaster which follows."

We submit that Paragraphs 2, 3 and 5 of the Commission's order will operate to confiscate appellants' property without due process of law and without compensation, in violation of their constitutional rights; that there is no evidence of record justifying those paragraphs of the order; that they create classifications of railroads which are arbitrary, inconsistent and illogical, and that in making said paragraphs of the order the Commission exceeded its statutory authority. Those paragraphs of the order should be permanently enjoined annulled, suspended and set aside.

Respectfully submitted,

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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1931.

No. 69

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL.,

Appellants,

vs.

THE UNITED STATES OF AMERICA, ET AL.,

Appellees.

REPLY BRIEF ON BEHALF OF APPELLANTS.

ALFRED P. THOM,
W. F. DICKINSON,
R. N. VAN DOREN,
R. V. FLETCHER,
HERBERT FITZPATRICK,
GEORGE F. BROWNELL,
C. C. PAULDING,
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BURTHORP-WARREN PRINTING COMPANY, CHICAGO.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1931.

No. 69.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, CHICAGO & NORTH WESTERN RAILWAY COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, THE CHESAPEAKE & OHIO RAILWAY COMPANY, ERIE RAILROAD COMPANY, THE NEW YORK CENTRAL RAILROAD COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, ATLANTIC COAST LINE RAILROAD COMPANY, LOUISVILLE & NASHVILLE RAILROAD COMPANY, SEABOARD AIR LINE RAILWAY COMPANY, and SOUTHERN RAILWAY COMPANY,

Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and SOUTH MANCHESTER RAILROAD COMPANY,

Appellees.

REPLY BRIEF ON BEHALF OF APPELLANTS.

MAY IT PLEASE THE COURT:

The brief filed herein on behalf of the United States and the Interstate Commerce Commission requires some

answer. We will deal with the arguments and statements in the order in which they are made.

(a) *The Facts.*

No exception is taken to the statement of the facts made in our brief, but in stating some additional facts, some errors have been made. On page 10 it is said that the so-called trunk lines are the principal beneficiaries under the rule which starts the per diem day at midnight. Witnesses produced by the American Short Line Railroad Association, did testify that a short railroad usually handles no overhead traffic, and is generally not in a position to average its use of cars so as to escape per diem (R. 148, 806); but it was also said that any disadvantage to any railroad resulting from starting the per diem day at midnight would obtain no matter at what time it was started, and that the same situation existed with respect to demurrage accruals. One witness further said that he did not admit that the rule was a disadvantage and thought that it had proved to be an advantage (R. 148, 149).

Moreover, the record affirmatively shows that many so-called "short lines" do handle traffic from one railroad to another and can escape per diem expense on the cars in which the traffic is hauled. Page 3 of Exhibits 29 to 40, inclusive, list 48 railroads less than 100 miles in length and which perform an intermediate line-haul service between other railroads. Each of these roads is able to handle non-owned freight cars in overhead traffic without incurring any per diem liability under the rule. In any event, the advantage of the trunk lines in this respect was not so obvious that the Commission required any change in the rule.

On page 12 of the brief it is said that the switching

reclaim rules are not mandatory as between subscribers, who are free to enter into special agreements according to the needs of local conditions. The record references there given do not support the statement made. A witness for the American Short Line Railroad Association did say that Rule 5 is not a mandatory rule (R. 143), but the subject is not referred to at page 196 of the record. The testimony of the Chairman of the General Committee of the American Railway Association was that Rule 5 is mandatory upon all subscribers in some respects, but that the reclaim rules are subject to changes to meet local or special conditions (R. 203). The operation of the reclaim rules is explained in some detail by the same witness at pages 895 and 896 of the record, from which it appears that while unchangeable reclaim rules cannot be made because of varying local conditions, any change necessary because of such conditions must be by unanimous agreement of all railroads interested.

On page 13 of the brief it is said that the obvious and admitted purpose of the Per Diem Rules discriminating against nonsubscribers is to induce or compel subscriptions to the Per Diem Agreement. The statement that any Per Diem Rules discriminate against nonsubscribers is a conclusion of counsel, as the Commission did not find that such discrimination existed. Moreover, the purpose of the rules is not solely to induce or compel subscriptions to the Per Diem Agreement, although it has always been felt that all common-carrier railroads should subscribe to that Agreement.

Reclaims were not allowed to nonsubscribers because they would not allow reclaims to subscribers or comply with the other requirements of the Per Diem Code (R. 903). The free use of non-owned freight cars was not permitted because of the undoubted right of every rail-

road company to receive compensation for the use of its cars by other railroads. Subscribers did not pay per diem on freight cars belonging to nonsubscribers in order to prevent the possibility of rebates to industries owning plant facility railroads (R. 901, 903). Thus, the purpose of the Per Diem Rules was not to produce discriminations or secure advantages for subscribers thereto, but was to produce uniformity in handling and accounting for freight cars used by railroads which did not own them, prevent violations of law, some of which would doubtless be unintentional, and secure to the owners of freight cars that compensation to which they were undoubtedly entitled when their cars are used by other railroads.

On page 13 of the brief it is also said that to require railroads less than 100 miles in length to subscribe to the Per Diem Agreement is to require them to take what the trunk lines are willing to give them. This is an erroneous view of the matter, since subscription to the Per Diem Agreement only requires a railroad to do what it should do as a common carrier. The payment of per diem for the use of non-owned freight cars, the keeping of its own accounts and allowance of reclaim in return for reclaim allowed it, are things which should be required of every railroad, whether or not it subscribes to the Per Diem Agreement of the American Railway Association. We submit that Per Diem Rules having this effect impose no hardship upon any common-carrier railroad.

At the bottom of page 13 of the brief it is said that the cost of accounting for non-owned cars used is so prohibitive that many short lines cannot afford to become subscribers to the Per Diem Agreement. The record references said to support this statement do not

support it. The witness for the Magma Arizona Railroad testified (R. 511) that he objected to settling car hire under the rules of the Association because of the extra cost, which he said was disproportionate to the volume of traffic handled by his railroad. The witness for the Appalachian Railway said (R. 660) that his road became a nonsubscriber because of the inconvenience of making reports to the owners of freight cars used by it.

The witness for the Pickens Railroad testified (R. 715) that his road canceled its subscription to the Per Diem Rules because the accounting was too much trouble and expense. The witness for the Alabama & Western Florida Railway testified (R. 711, 712) that he figured membership in the Per Diem Agreement would impose a cost on his road in excess of the reclaim received and that the principal objection to joining the Association was notifying different roads of the receipt and return of cars belonging to them. The witness for the Tennessee & North Carolina Railway testified (R. 717) that his road was not a subscriber as he thought the expense of subscription would be greater than the benefits thereof.

The roads referred to in the first report of the Commission (R. 47, 48) were the Oneida & Western, which was a subscriber at the time of the hearings before the Commission and had not then withdraw as a subscriber because of the cost of accounting for cars; the Sewell Valley Railroad, which, according to the statement of the Commission, withdrew its subscription to the Per Diem Rules because of the claim that the cost of subscription was greater than the per diem it received on its own cars; and the Appalachian Railway to which we have already referred. It thus appears that none of these railroads either became or remained nonsub-

scribers because the cost of accounting was so prohibitive that they could not afford it. On the contrary, they became or remained nonsubscribers because they were unable to make a profit through subscription.

On page 14 of the brief, it is again said that the Commission found unreasonable those provisions of the Per Diem Code which discriminated against nonsubscribers. Here again, the statement that any provisions of the Per Diem Code discriminate against nonsubscribers is a conclusion of counsel, as the Commission found no such discrimination. As a matter of fact, the record would not support such a finding and there is no claim in the brief that it would.

(b) *Paragraph (2) of the Order.*

The brief filed on behalf of the United States and the Commission seeks to justify Paragraph (2) of the order by the claim that this paragraph, properly read, requires the payment of reclaim by nonsubscriber roads. It is said (p. 22) that the requirement that similar reclaim allowances shall be made to nonsubscribers as to subscribers can only mean that both classes of railroads are to be treated alike. The facts do not support this view. At the time of the hearings before the Commission, terminal switching reclaim allowances were only made as between subscriber roads. No such allowances were made, under the rules, as between subscriber and nonsubscriber roads. The only change in this situation, required by Paragraph (2) of the order, is that subscribers must allow reclaim to nonsubscribers. This leaves nonsubscribers in the position of not being required to pay reclaim to subscribers, the position they have always occupied.

As further justifying their view, counsel say at page 22 of their brief:

> "The Commission's obvious purpose was to place nonsubscribers on an equal footing with subscribers."

We submit that this is not so. On the contrary, the obvious purpose and admitted effect of the Commission's order was to create differences and inequalities as between railroads. It is conceded that Paragraphs (3) and (5) of the order create those differences and inequalities. Moreover, the record affirmatively shows that, contrary to the view expressed in that brief (p. 22), the so-called short lines, in the proceedings before the Commission, did seek preferential treatment. They asked for advantages which they were not willing to extend to subscriber roads, urging as a justification for such preferential treatment, the shortness of their railroads, their lack of freight cars and their claimed financial disabilities.

Assuming the creation of an inequality by Paragraph (2), the brief undertakes to justify it by suggesting that nonsubscriber roads will allow reclaim without compulsion and by the assertion that in any event the Per Diem Rules could be modified so as to require them to allow it. Neither argument is good. It may not be assumed that nonsubscriber roads will spend money they are not required to spend, nor may the rights of appellants be made dependent upon the voluntary action of others. This was the effect of the constitutional provision condemned in *Louisville & Nashville R. Co. v. Stockyards Company*, 212 U. S. 132, 143, 144. Nor can appellants cure the defect in Paragraph (2) by modifying the Per Diem Rules so as to require nonsubscriber roads to allow reclaim. The rules might be so modified, but as modified, they would not and could

not impose any obligation upon a railroad not bound by them.

Although the reports and order of the Commission do not show that Paragraph (2) of the order is intended to cure a discrimination, counsel for the United States and the Commission seem to regard that as its purpose. It is then urged (p. 21) that appellants are not entitled to an election as to the method of removing the discrimination, since the Commission has the right to establish reasonable car hire rules; that Paragraph (2) permits an election and that it is unlikely that appellants would desire to discontinue the allowance of reclaim. The answers to these suggestions are obvious. It may be admitted that the Commission has power to establish reasonable rules, but they must be reasonable and supported by the evidence. A rule which is only supported by the expressed desire of some railroads for a preference and which creates inequalities instead of eliminating them is not reasonable and may not be sustained. This is the case of Paragraph (2).

Nor does Paragraph (2) permit an election to appellants. The thought apparently is that by changing the Per Diem Rules in such fashion as to eliminate reclaim entirely, the necessity of allowing reclaim to nonsubscribers under the order would disappear. The order of the Commission may not be so read. It is definite in imposing certain obligations upon subscriber railroads and conferring certain rights upon nonsubscriber railroads, and these obligations and rights are fixed until the further order of the Commission (R. 100).

Nor may counsel assume that appellants will not desire to entirely abandon reclaim. They may not, as a matter of fact, but it cannot be said definitely by anyone that they would not prefer to do it rather than sustain

the uncompensated losses which the order imposes upon them.

At the bottom of page 22 of the brief, it is also inferred that under Paragraph (4) of the order, nonsubscriber roads may be required to pay reclaim to subscribers, but this is obviously not so. Paragraph (4) of the order only prescribes the application of the Per Diem Rules with respect to designated railroads, in so far as those rules relate to the payment of per diem and the making of settlements direct with car owners. And even if Paragraph (4) of the order had the effect contended for by counsel, it still excepts railroads less than 100 miles in length and which deliver back to each connecting subscriber railroad all freight cars received from it. Such railroads are entitled to reclaim under Paragraph (2), if they are nonsubscribers, but are not required to allow it under any view of Paragraph (4).

(c) *Paragraph (3) of the Order.* The brief of the United States and the Commission undertakes to justify Paragraph (3) of the order on the ground that it relieves a designated class of railroads of the expense of accounting for non-owned freight cars used by them. A benefit to trunk lines under Paragraph (3) is also inferred, based upon testimony that the total number of reports received by them would be decreased. That the benefit would be actual is not proven on the record. It is said (p. 24) that one witness testified that the trunk lines would incur no extra burden under Paragraph (3), but the witness referred to did not so testify. What he actually said (R. 825) was that if the members of the American Short Line Railroad Association did their own accounting as it is done by the trunk lines, it would impose a burden on the traffic of the country to the extent of $500,000 a month, no part of which would be imposed

on the trunk lines, and that it would be easier for the Burlington Railroad to get all its reports from the trunk lines than from the short lines.

It is easy to conclude that appellants and other carriers similarly situated are benefited by Paragraph (3), but such a conclusion is contrary to the fact. The evidence is clear that Paragraph (3) will impose an expense upon appellants and other carriers similarly situated (R. 160, 167, 168). It is clear, of course, that if every railroad did its own accounting for non-owned freight cars used by it, it would incur some expenditure but the record does not support the statements (p. 25) that the financial burden of such accounting is enormous or that short railroads were unable to become subscribers to the Per Diem Agreement because of that cost. As we have pointed out, those railroads which did not subscribe to the Per Diem Agreement and those which withdrew, took this action because they could not make a profit out of such subscription.

The testimony referred to does not demonstrate any enormous burden resting upon the railroads in question and resulting from their payment of the accounting expense incurred in the operation of their own railroads. It is only an expression of a natural desire to escape an obligation which is not said to be improper. Undoubtedly, the doing of this work is an expense to such railroads. It is equally certain that requiring appellants and other carriers similarly situated to do the work imposes an additional expense upon them. The conclusion that they should, nevertheless, be required to sustain the expense is sought to be justified only because of the expressed desire of short railroads to avoid the expense.

Nor may the transference of this expense from the so-called "short lines" to the trunk lines, including ap-

pellants, be justified by the argument that it is a commendable plan which will benefit the railroad system as a whole. That this will be its effect is but a conclusion of counsel resorted to to support a requirement which is not susceptible of other justification. The Commission made no such finding, and the evidence would not sustain it. Contrary to the argument made, (p. 25), the purpose of Paragraph (3) may not be said to promote public interest or to produce economical transportation cost. Its only effect is to relieve designated railroads of an operating expense incurred in the operation of their own lines and which they should be required to assume by virtue of their legal position as common carriers; this expense being imposed upon their connections. The paragraph produces only a transference of expense.

The car hire provisions of Section (1) of the Act to Regulate Commerce confer no authority upon the Commission to manipulate the operating expense of railroads under the guise of producing economies in national transportation. Nor has the Commission adopted this position. The idea is that of counsel. And in any event, the property of appellants is not yet subject to confiscation without the payment of compensation because it may be thought that such confiscation is a desirable thing.

In the case of a short railroad having only one connection, it might be practical for the connecting line to do the car accounting for such a railroad. In its petition for rehearing filed in this case with the Commission (Part of Ex. 1, certified to this court), the American Railway Association agreed to have its trunk line members assume this burden, although denying that they were under any legal obligation to assume it. Such an offer, however, adds nothing to the propriety of Paragraph (3) of the order.

(d) *Paragraph (5) of the Order.*

The argument in the brief of the United States and the Commission supporting the requirements of Paragraph (5) of the order may be briefly stated. One contention is that the so-called "short lines", in performing the duties incident to the transportation of freight over their rails are likely to have freight cars in their possession a disproportionate length of time, and that, therefore, the Commission was justified in making an apportionment, as between car users, of the total cost of furnishing cars for through transportation. The second contention seems to be that because some trunk lines have voluntarily made concessions to short railroads by permitting the use of their freight cars without requiring payment, the order of the Commission requiring all trunk lines, including appellants, to do the same thing must be held sound.

With respect to the first contention, it is said (p. 27) that the Commission adopted the view that car hire costs incurred in the joint use of cars might reasonably be distributed between participating railroads; that (p. 29) such a determination is not inconsistent with the finding that car owners are entitled to $1 per day for the use of their cars, and that (p. 30) it is the duty of the Commission to equitably apportion the cost of the use of freight cars among the parties to the transportation. In considering this argument, it should be remembered that every operation performed by a short railroad in handling freight is also performed by a longer railroad. The circumstances listed on pages 28 and 29 of the brief are no more than the ordinary incidents of all freight transportation by rail.

It would seem that such circumstances, common to freight transportation on all railroads, would not justify a difference in treatment to railroads because of the

varying length or ability to return cars to the railroad from which they were received. The relative cost of performing these transportation services might be of importance in a case involving the division of joint rates, but this is not a divisions case, and cost of service was not an issue. The fact is, however, that Paragraph (5) of the order does not make an apportionment or distribution of car hire among railroads performing a joint haul.

Thus, we may assume a shipment handled in joint service by two trunk lines and a short railroad benefited by Paragraph (5). Under that Paragraph, one trunk line, in addition to its own car hire, is required to assume part or all of the car hire accruing upon the line of the short railroad, while the other trunk line goes free of any charge beyond that incurred by it for its own use of the freight car. Thus, the only effect of the Paragraph is to impose all or a part of the short railroad's car hire expense upon its immediate connection without regard to whether, under a proper apportionment among all railroads participating in the joint haul, such a distribution of car hire expense is just or equitable.

The argument made by counsel reduces to the proposition that short railroads, because of the expense of their operation, are entitled to some financial relief, and that the Commission has adopted the correct method of granting them that relief. As we have pointed out in our main brief (pp. 88 *et seq.*), this is not correct, under the law and the evidence of record. Moreover, Paragraph (5) does not, as a matter of fact, produce the distribution upon which the argument is based.

The decision of this court in *Atlantic Coast Line R. Co.* v. *Riverside Mills*, 219 U. S. 186, is cited by counsel (p. 34) to support the conclusion reached, but does not

do so. In this case, there is no agency relationship between trunk lines and short railroads. All railroads affected are common carriers in every sense of the word and should be required to assume the obligations of such carriers. In dealing with the contention made in that case that there was a violation of the Fifth Amendment, this court said, at page 206, after referring to the agency relationship between a receiving carrier and succeeding carriers:

> "It is, therefore, not the case of making one pay the debt of another."

That is, however, the exact situation presented in the case at bar, since appellants and other carriers similarly situated are specifically required by Paragraph (5) of the order to pay the debts incurred by other railroads in their own operation. Moreover, the enactment under consideration in the *Riverside Mills Case, supra,* permitted a recovery by the railroad compelled to pay, from the railroad actually at fault, whereas, in the case at bar, there can be no recovery by appellants of any amounts disbursed by them.

And contrary to the statement in the brief (p. 29), the alleged apportionment of car hire among joint car users is inconsistent with the Commission's finding that car owners should receive $1 a day for the use of their cars (R. 92). Thus, if any appellant uses one of its own cars in joint service with a railroad which is not required to pay car hire under Paragraph (5) of the order, such appellant will necessarily receive less than $1 a day for the use of its car by another common-carrier railroad. Such a result is in plain contradiction of Finding 1 in the Commission's first report.

Nor can Paragraph (5) of the order be justified by a reference to concessions voluntarily made by some railroads. It is true, as we pointed out in our main brief

(pp. 7, 29) that such concessions have been made to a limited extent. The obvious answer to the claim that this justifies the requirements of Paragraph (5) is that a party may voluntarily concede a privilege which it may not be compelled to grant. Thus, a railroad might voluntarily concede some free use of its cars, because it is dealing with its own property, but could not be compelled to make such a concession against its wish and desire. Even if its voluntary concession created an illegal discrimination, it would have to be given the right to cure the discrimination by discontinuing the concession. *Great Northern Ry. Co.* v. *Minnesota*, 238 U. S. 340, 346, 347.

Moreover, a requirement that all railroads must suffer because of the dereliction of a few is plainly unjust and unreasonable. The record fails to show that many of the appellants in this case and that hundreds of other railroads in the United States make the concessions referred to in the Commission's first report and in the brief. This being so, what justification could there be for the requirement that they suffer the loss of their property because other railroads have seen fit to voluntarily concede some use of their cars without compensation? Obviously, there is none.

The propriety and necessity of allowing some railroads the free use of non-owned freight cars has never been generally recognized. A few railroads have granted such use for various reasons, and the Railroad Administration traded this concession for concessions made to it. On the whole, however, such free use of freight cars was not allowed, this being a major complaint of the American Short Line Railroad Association on the hearings before the Commission.

We concede that uniformity is at least desirable in the interchange of freight cars and the payment therefor by

roads using but not owning them. We may also concede that the paramount purpose of the Interstate Commerce Act is the production of uniformity in order that preferences and discriminations may be eliminated. But it does not result from this that an order of the Commission making unreasonable requirements and producing an illegal taking of property is to be affirmed merely because the illegality and unreasonableness may be uniform in its application.

(d) *Brief of South Manchester Railroad Company.*

The brief of this appellee is on the same lines as the brief on behalf of the United States and the Commission. The same arguments are made and the order is sought to be justified on the same grounds. We desire, however, to call attention to a few specific statements in this brief.

At page 6, it is pointed out that the Per Diem Code did not contemplate the payment of per diem by subscriber railroads for their use of freight cars belonging to nonsubscribers. This circumstance is also referred to on pages 11 and 24 of the brief as being an outstanding example of the injustices perpetrated by subscriber railroads upon nonsubscribers. Paragraph (1) of the Commission's order (R. 99) is calculated to cure this complaint and appellants do not attack that paragraph of the order.

Moreover, the fact is that under the Commission's order the situation complained of is now reversed. As we pointed out in our main brief (p. 37) appellants and other railroads similarly situated are now deprived of the right to receive per diem when their cars are used by certain other railroads but are required to pay per diem under all circumstances for their use of cars belonging to those railroads. Such a result was condemned by

the principal witness for the American Short Line Railroad Association (R. 160) and, since appellants are certainly common-carrier railroads, is not supported by the reason which justified the requirement of the Per Diem Code. If the inability of nonsubscriber roads to secure per diem was unfair, the result created by the order is equally unfair.

This brief also argues (pp. 24, 25) that under Paragraph (2) of the order, reclaim is required to be allowed by nonsubscriber to subscriber railroads. This is incorrect for the reasons we have heretofore pointed out. At page 26 of the brief, it is said that Paragraph (5) does not mean that a short line is relieved of paying a fair proportion of the car hire expense or that the owner of a car is deprived of reasonable compensation. Such a statement is contradicted by the language of the Paragraph. With respect to cars for return coal loading, no car hire is to be paid by designated lines. And, as we have pointed out, to the extent that appellants and other carriers similarly situated use cars owned by them, jointly with railroads which are relieved of all or a portion of their car hire expense, such appellants will be deprived of reasonable compensation for the use of their cars. A car owner will receive the per diem found proper by the Commission only in cases where it does not participate in the haul. In such case, the connecting lines of railroads favored under Paragraph (5) will be the sufferers.

As a justification for the requirements of Paragraph (3) of the order, the brief alleges (pp. 29, 44) that the accounting for the designated railroads can be performed by appellants and other railroads similarly situated at little additional expense because of their present accounting equipment, and that requiring "short lines" to do

their own car accounting would be contrary to the interest of the railroads and the public. To say the least, these are odd arguments. It is scarcely in appellants' interest that they be required to spend their money in assuming the obligations of other railroads, and the public interest which would be served is not named or otherwise identified. And if ability to do the work is to be the controlling factor, why should not appellants and other railroads similarly situated be required to assume all operating expenses of "short lines"? Such a result would seem to follow.

On page 33 of the brief, it is said that a particular carrier cannot complain if it does not receive $1 per car for each day the car is off its line. We submit that this is not correct, since the Commission in finding (1) in its first report (R. 92) has expressly recognized the right of every common carrier to receive this amount for each day its cars are off its line. Moreover, the order confirms the right to some railroads while denying it to appellants and other carriers similarly situated.

At page 37 of the brief, the *Assigned Car Case*, 274 U. S. 564, is cited as disposing of our claim of confiscation. The case cited does not have this effect, for as we pointed out in our main brief (p. 83), no question was presented in that case concerning the payment of compensation for the use of the private cars there involved.

At page 39, the *New England Divisions Case*, 261 U. S. 184, is cited as justifying the argument that the Commission has power to apportion car hire among railroads jointly using a freight car. We have heretofore pointed out that the order of the Commission does not produce such an apportionment. Moreover, the case cited is not an authority supporting the argument made. In the *New England Divisions Case*, the Commission had pro-

ceeded under a specific statute authorizing it to fix divisions of joint rates as between the carriers performing service under those rates. The complaint made was that the Act was unconstitutional if it authorized a distribution of revenue between carriers upon the basis of the greater financial needs of particular carriers, although it was not claimed that in that case the apportionment resulted in confiscatory rates. In dealing with the point this court held (p. 195) that the argument must fail because the primary jurisdiction to determine the proper share belonging to any carrier was to be fixed by the Commission.

In the case at bar, we concede the jurisdiction of the Commission to fix the reasonable compensation to be received by one railroad for the use of its cars by other railroads, and, as a matter of fact, the Commission has fixed that compensation at $1 per car per day. To this action of the Commission we do not object. Our complaint is that having fixed this compensation as proper, the Commission has denied the right of appellants and other carriers similarly situated to receive it under certain conditions, while confirming to other railroads their right to receive this compensation under all circumstances.

At page 40 of the brief, the case of *Michigan Central R. Co.* v. *Michigan Railroad Commission*, 236 U. S. 615, is also cited as justifying the argument that the action of the Commission in the case at bar is proper, even though it results in taking appellants' property. The case cited does not so hold. In speaking of the requirement of the Michigan Railroad Commission there in issue, this court said at page 632:

> "Nor does it contemplate that plaintiff in error shall be required to permit the use of its cars (or the

cars of other carriers for which it is responsible) off its line without compensation. The state court expressly held that Paragraph 7-c provides for reasonable compensation to the carrier whose cars are used in the interchange."

This is not true in the case at bar, since the order specifically requires that appellants and other carriers similarly situated permit the use of their freight cars by other railroads, either without any compensation at all or upon the payment of compensation less than that found reasonable by the Commission. In so far as it relates to the right of a railroad to receive compensation when its cars are used by other railroads, the *Michigan Central Case, supra,* fully supports the decision of this court in *Louisville & Nashville Ry. v. Stockyards Co.,* 212 U. S. 132, 143, 144.

At pages 44 and 45 of the brief, point is made of the statement appearing at page 47 of our brief to the effect that numerous hearings were held by the Commission and a complete record was made. Counsel argues that if the record was complete, it necessarily supports the order made by the Commission. This does not follow. While the record was complete in a way, since it included 5,000 pages of testimony and over 500 exhibits, the evidence taken does not, we submit, support the requirements of Paragraphs (2), (3) and (5) of the Commission's order. Indeed, it is doubtful if any evidence would justify these paragraphs.

Conclusion.

We submit that a consideration of the briefs filed herein by appellees requires a reversal of the judgment entered in the lower court. Reduced to essentials, the claim of appellees is that the order must be approved because the Commission made it; that the Commission's right to regulate is superior to the rights of appellants under the constitution of the United States and that Paragraphs (10) to (14) of Section 1 of the Act to Regulate Commerce should be so construed as to permit the Commission to financially assist some railroads through the medium of car hire, at the expense of their immediate connections.

As a variant of these contentions, it is urged that in some respects the Commission's order should be read in such fashion as to avoid the objections urged against it, in contradiction to the language actually used; that in other respects the conceded taking of appellants' property should be upheld because the amounts taken may not be large; that there should be attributed to the Commission, without any finding to that effect, an intention to benefit national transportation at the expense of appellants and other railroads similarly situated and without return to them. The order must be reasonable and not arbitrary, if it is to be sustained, but counsel only demonstrate its reasonableness by statements that it is so. Nowhere is it argued that the order does not take appellants' property. Nowhere is it argued that appellants receive any compensation for this taking. Conceding the taking without compensation, it is insisted that it is justified by the considerations to which we have referred.

We submit that this is not so. There are limits upon what the Commission may do, and we submit that those limits have been surpassed in this case. No construction of Paragraphs (10) to (14), inclusive, of Section (1) of the Act to Regulate Commerce confers upon the Commission authority to do what it has here done.

Respectfully submitted,

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No. 69

In the Supreme Court of the United States

OCTOBER TERM, 1931

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

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OPINIONS BELOW

The specially constituted District Court wrote no opinion. Its findings of fact and conclusions of law (R. 1169) are not reported. The report of the Commission (R. 17) is reported in 160 I. C. C. 369. The Commission's order is contained in a supplemental report (R. 97) reported in 165 I. C. C. 495.

JURISDICTION

The decree of the District Court was entered January 29, 1931. (R. 1174.) The petition for appeal was filed January 29, 1931 (R. 1176) and was allowed the same day. (R. 1179.)

The jurisdiction of this Court rests on the Act of October 22, 1913, c. 32, 38 Stat. 208, 220 (U. S. C., Title 28, Sec. 47), as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938 (U. S. C., Title 28, Sec. 345).

QUESTION PRESENTED

The question presented is whether the Commission's order is supported by evidence and is reasonable, nondiscriminatory and nonconfiscatory.

STATUTE INVOLVED

The Interstate Commerce Act, as amended, provides in part:

> SEC. 1 (10) The term "car service" in this Act shall include the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, and other vehicles used in the transportation of property, including special types of equipment, and the supply of trains, by any carrier by railroad subject to this Act.
>
> (11) It shall be the duty of every carrier by railroad subject to this Act to furnish safe and adequate car service and to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service; and every unjust and

unreasonable rule, regulation, and practice with respect to car service is prohibited and declared to be unlawful.

(12) It shall also be the duty of every carrier by railroad to make just and reasonable distribution of cars for transportation of coal among the coal mines served by it, whether located upon its line or lines or customarily dependent upon it for car supply. During any period when the supply of cars available for such service does not equal the requirements of such mines it shall be the duty of the carrier to maintain and apply just and reasonable ratings of such mines and to count each and every car furnished to or used by any such mine for transportation of coal against the mine. Failure or refusal so to do shall be unlawful, and in respect of each car not so counted shall be deemed a separate offense, and the carrier, receiver, or operating trustee so failing or refusing shall forfeit to the United States the sum of $100 for each offense, which may be recovered in a civil action brought by the United States.

(13) The Commission is hereby authorized by general or special orders to require all carriers by railroad subject to this Act, or any of them, to file with it from time to time their rules and regulations with respect to car service, and the Commission may, in its discretion, direct that such rules and regulations shall be incorporated in their schedules showing rates, fares, and charges for

transportation, and be subject to any or all of the provisions of this Act relating thereto.

(14) The Commission may, after hearing, on a complaint or upon its own initiative without complaint, establish reasonable rules, regulations, and practices with respect to car service by carriers by railroad subject to this Act, including the compensation to be paid for the use of any locomotive, car, or other vehicle not owned by the carrier using it, and the penalties or other sanctions for nonobservance of such rules, regulations, or practices. (c. 91, 41 Stat. 476; U. S. C., Title 49, Sec. 1 (10)–(14).)

STATEMENT

This suit was brought in the United States District Court for the Northern District of Illinois by appellants, twelve common carriers subject to the Interstate Commerce Act, on behalf of themselves and other carriers similarly situated, to set aside parts of an order of the Interstate Commerce Commission entered July 15, 1930. (R. 1.) The Commission's order was entered in a proceeding commenced by the Commission on its own motion, following complaints principally from the American Short Line Railroad Association, for the purpose of investigating generally the rules and practices then in force among railroads throughout the United States for the settlement of car hire charges, i. e., charges for the use and detention of freight cars while on the lines of common carriers other than

their owners.[1] (R. 20.) The collection of these charges has for some time been governed by rules adopted by vote of railroads which are members of the American Railroad Association, a voluntary association of railroads hereinafter referred to as the A. R. A. The Commission's order to some extent revises and supplements these rules. (R. 99–100.) The portions of the order that are attacked are said to be unsupported by evidence and to be unreasonable and confiscatory, in violation of the Fifth Amendment to the Constitution.

All common-carrier railroads in the United States were made parties to the Commission's proceeding and hearings were held in various cities. (R. 4, 5, 6.) Testimony was presented to the Commission on behalf of short-line railroads by the American Short Line Railroad Association. (R. 21.) In addition, about 141 individual short-line railroads submitted evidence. The A. R. A. offered evidence in support of the existing rules. At the Commission's request, transportation officials of fifteen trunk-line carriers appeared, primarily to explain departures from the rules. A record was made up, consisting of some five thousand pages of testimony and over five hundred exhibits.

Originally, freight cars did not leave the owners' lines, but freight was transferred at junction points

[1] Together with the main proceeding before the Commission, there were consolidated a number of individual car-hire cases (R. 20–21), none of which, however, is separately involved in this appeal.

to cars of the connecting carriers. *In the Matter of Car Shortage,* 12 I. C. C. 561, 573. To economize in time and expense, and particularly to improve the service, the practice arose, instead of reloading cars at junction points, of permitting the loaded cars to pass on to the tracks of connecting carriers. (R. 152–53.) Similarly, the desire to obtain traffic led car-owning roads to supply empty cars to connecting roads to be filled and returned over the roads of the car owners. (R. 153.)

In 1911 the Commission decided that the Interstate Commerce Act, as amended, rendered compulsory the interchange of equipment among railroads subject to the Act, and that carriers could not refuse to permit freight equipment to pass onto the rails of connecting carriers. *Mo. and Ill. Coal Co. v. Ill. Cent. R. R. Co.,* 22 I. C. C. 39. Under the Esch Car Service Act of May 29, 1917 (40 Stat. 101), as amended and reenacted by the Transportation Act, 1920, the Commission is authorized to require car service rules to be filed with it the same as tariff schedules. (Section 1 (13), *supra,* pp. 3–4.) But this authority has not thus far been exercised. (R. 4.)

The practice of collecting car-hire charges developed in the late sixties, but prior to 1902 no uniform method of determining a proper car-hire charge and of collecting it prevailed. (R. 140–1.) Before that date, car-hire compensation was usually computed on a mileage basis. (R. 140.) In exceptional instances a per diem or a combined

mileage and per diem basis was employed. (R. 140.) The mileage basis proved undesirable because the owner could not check the distance its cars travelled when on foreign lines and because it provided no incentive to return cars promptly. (R. 194, 907, 23.) In 1902 when the A. R. A. promulgated the Code of Per Diem Rules containing uniform rules governing the exchange of freight equipment, the per diem basis of paying for the hire of exchanged equipment was adopted.

To make the code binding, carriers subscribed to the Per Diem Agreement whereby they agreed to abide by and enforce the rules contained in the code. (R. 194, 975, 24.) Only common-carrier railroads were permitted to sign the agreement. (R. 902, 24.) An agreement substantially similar to that first used is still in force, with some provisions added. (R. 24.) Subscribers to the present agreement, in addition to agreeing to abide by the per diem rules, agree to adopt certain "car service rules" which have been incorporated by reference into the per diem code in rules 3 and 19. (R. 1068, pp. 7 and 50.) They also authorize the Car Service Division, with headquarters at Washington, to act for them in all car service matters and to be their agent for service of orders and regulations under the car service provisions of the Interstate Commerce Act. (R. 24.) Subscribers are required to be equipped with adequate motive power. (R. 4, 24.) They must be members of the Bureau for the Safe Transportation of Explosives and Other

Dangerous Articles, and parties to the M. C. B. Interchange Agreement, and must put in force the National Car Demurrage Rules. (R. 24–25, 194.) A subscription application must be approved by at least two-thirds of the lines connecting with the applicant's road. (R. 194.) A subscriber must also be a member or associate member of the A. R. A. (R. 194.)

Only carriers operating more than one hundred miles of road are eligible to become members of the A. R. A. (R. 25.) Each thousand miles of road or fraction thereof operated entitles the railroad to one membership in the A. R. A.; and each membership entitles the road to one vote in the adoption or revision of the per diem rules. (R. 161, 25.) Appellants are all A. R. A. members and subscribers to the per diem agreement. (R. 4.)

Carriers operating less than a hundred miles of road can become associate members of the A. R. A. (R. 25.) Associate members have no voting rights whatsoever. (R. 154, 161, 219, 25.) They share in the expense of the A. R. A., paying $40 annual dues. (R. 667, 670.) They are required to agree to abide by the rules and regulations of the A. R. A., but have no representation on the A. R. A. committees which interpret and apply the rules. (R. 25, 193; Rule 1, R. 1068, p. 46.) It is clear, then, that the short lines have no voice in the adoption, revision, or application of the rules. Such powers rest solely with the trunk lines. The vote of a majority of the memberships, representing

two-thirds of the freight cars owned or controlled by subscribers, is necessary for the adoption of new rules. (R. 26.) Since eight roads own more than one-third of the freight cars owned by all subscribers, those roads could prevent any change in the rules. (R. 219–220.) One of the demands made by the short lines in this proceeding, which the Commission did not grant, was that the short lines be given representation on the committees which make and interpret the per diem and car service rules. (R. 139.)

A. R. A. members and associate members, all subscribers to the per diem agreement, include 1347 out of 1731, or 77.81 per cent of all steam railroads in the United States, operating 97.79 per cent of all railroad mileage, and owning 99.81 per cent of the interchangeable freight equipment owned by all railroad common carriers. (R. 194, 893, 1066.) All Class I and nearly all Class II railroads are subscribers. Most of the nonsubscribers are Class III roads. (R. 196.)

The per diem code showing the original and amended per diem rules is printed in full in the record at page 1068. Car-hire charges are made payable at a per diem rate of $1.00 per car, that amount having been increased gradually from the 20-cent rate in effect at the time the per diem rules were first promulgated. (Rule 1, Code p. 5; R. 157–158.) The per diem rate is supposed to represent the average cost, to the owner, of freight car cost and maintenance, including cost of repairs,

taxes, replacements, miscellaneous expenses, and a return of 6 per cent on the investment. (R. 26, 222, 226.)

Car days are reckoned by charging the road having a car in its possession at midnight with the rental for the following day. (Rule 2, Code p. 5.) Thus, no car hire is paid on cars received after midnight and passed on before the following midnight. That situation occurs principally in the case of trunk lines, and only in exceptional instances in the case of short lines, due to the fact that only the former ordinarily have an overhead traffic, that is, receive cars from one carrier for delivery to another. (R. 148, 806.)

The mechanics of reporting and accounting for car hire are provided for in Rules 9 to 12, inclusive. Daily Interchange Reports are required to be made, recording all cars interchanged between subscribers, these reports being transmitted by the delivering to the receiving carriers for verification. (Rule 9, Code, pp. 17–18.) The delivering carriers also transmit daily Junction Reports to the car owners notifying the latter of all interchanges with subscribers effected during the day. The owners thereafter look to the receiving subscriber roads for the per diem until notified that further interchanges have been effected. (Rule 10, Code, p. 18.) No report to the car owner is required when a car is interchanged with a nonsubscriber. (Rule 6(a), *infra*, p. 12.) Subscriber car users are also required to render monthly reports to the various car owners,

and monthly settlements are made on the basis of these reports. (Rules 11, 12, Code, pp. 24–25, 26.) Under Rule 4 every subscriber to the per diem agreement is required to make reports to, keep accounts, and settle with each subscriber owner of cars handled by it, whether in road or in switching service. (Code, p. 7.)

Rule 5 provides for so-called switching reclaims. (Code, pp. 7–11.) When the per diem rules were promulgated a number of trunk lines, which performed a large volume of switching, refused to subscribe to the per diem agreement upon the ground that existing switching charges did not permit payment of the full per diem rental on cars used in switching service. (R. 142.) It was regarded as impractical to increase switching charges throughout the country to render possible the absorption of the car rental. (R. 142, 158.) In order, therefore, to induce trunk lines performing switching service to adopt the per diem code, a compromise was reached whereby subscribing carriers performing a switching service pay the full per diem on cars of other carriers which they switch, but reclaim the average cost to them of per diem charges on such cars from the line haul carriers for which the switching is done. (R. 142, 143, 1068, Code, pp. 7–11.)

A code of rules governing switching reclaims[2] has been established and made a part of the per

[2] Switching reclaims are of importance principally in connection with terminal switching as defined in the Code.

diem code by incorporation by reference in Rule 5. (R. 200, 215, Code, pp. 11, 56–67.) The switching reclaim rules are not mandatory as between subscribers, who are free to enter into special agreements with each other according to the needs of peculiar local conditions. (R. 143, 196, 203.)

Paragraph (e) of Rule 5 provides that no reclaims shall be allowed to nonsubscribers. (Code, p. 8.) Rule 6, as amended in 1922, provides (Code, p. 12):

> (a) In case a subscriber delivers a car of any subscriber to a nonsubscriber it shall be responsible to the owner for the per diem accruing on the car while on such nonsubscriber road. The owner will accept settlement for the use of the car only from the delivering subscriber, which shall make settlement with the nonsubscriber in accordance with paragraph (b) of this rule.
>
> (b) Subscriber roads shall make settlement with their nonsubscriber common carrier connections (other than roads which have been declared industrial common carriers) at the established per diem rate, without any free time allowance and without reclaim.

Rule 18 renders the per diem rules inapplicable to cars of nonsubscribers. (Code, p. 47.) By resolution supplementary to Rule 18, subscribers have agreed to pay nonsubscribers for the use of the latter's cars on a mileage instead of a per diem

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(Code, p. 60; R. 199, 200, 203.) Of two other kinds of switching, intermediate and interterminal, only one day's reclaim is now given for the former and none at all for the latter. (Code, pp. 10, 62; R. 164, 198, 398.)

basis. (R. 46, 667.) The obvious and admitted purpose of these provisions discriminating against nonsubscribers is to induce or compel subscriptions to the per diem agreement. (R. 195, 666, 840, 850, 901, 903.) Per diem costs may exceed the total switching charges collected, thus rendering switching operations unprofitable unless reclaim is received. (R. 710, 742.) The Commission found that the effect of paying for the use of nonsubscribers' cars on a mileage basis was to give nonsubscribers an average of 50 cents per car day, whereas the per diem code provides for a per diem payment of $1.00 for the use of subscribers' cars by either subscribers or nonsubscribers. (R. 46.) The hire of private cars is paid for on a mileage basis, but the use of private cars is restricted to transportation of such shipments as owners may designate. Nonsubscribers' cars are ordinarily general-service cars, the same as those of subscribers.

Since short lines operating less than 100 miles of road have no voice in the adoption or revision of the per diem rules (*supra*, p. 8), to require them to subscribe to the per diem agreement is, in effect, to require them to take what the trunk lines are willing to give them. Furthermore, the cost of accounting for car hire to all car owners individually as is required of subscribers is prohibitive so far as many short lines are concerned; they can not on that account afford to become subscribers. (R. 511, 660, 715, 711, 717, 47, 48.)

The Commission in its report in this case, after reviewing the evidence, made certain formal findings. (R. 92, 93.) The Commission found that car owners are entitled to collect a reasonable car hire charge, and that $1.00 per car day is such a reasonable charge. The Commission found further that those provisions of the per diem code which discriminate against nonsubscribers are unreasonable, and should be removed by providing (1) for the payment of the same daily car rental charges to nonsubscribers as are paid to subscribers, and (2) for the allowance of switching reclaims on equal terms to both nonsubscribers and subscribers.

The Commission approved the general method of accounting for car hire embodied in the per diem rules, but found it to be uneconomical and unreasonable to require short lines, less than a hundred miles in length, which return equipment to the road from which it is received, to report and account to the numerous car owners throughout the country. Such lines, the Commission found, should be attached to their connecting carriers for the purpose of car hire settlement. In addition, it was found that the same short lines should be allowed an average of two days' free time per loaded freight car interchanged, and that no car hire should be paid by such lines for cars received for return loading with coal from coal mines which are customarily dependent upon connecting carriers for car supply.

The Commission entered no formal order at the time it published its findings, in order to permit the carriers voluntarily to modify their rules to conform to the findings. The carriers refused to modify their rules; whereupon the Commission, in a supplemental report, issued its order directed against the respondents (all common carrier railroads in the United States) requiring them to establish by October 1, 1930, car hire settlement rules which should provide (R. 99–100):

> (1) That the same daily car rental shall be paid to common-carrier nonsubscribers as respondents contemporaneously pay to subscribers to the per diem rules agreement of the American Railway Association, for the use of general-service freight cars.
>
> (2) That similar reclaim allowances shall be made to nonsubscribers as to subscribers of the per diem rules agreement, in connection with cars handled in terminal switching service, as the latter term is defined by the switching reclaim rules of the American Railway Association.
>
> (3) That short-line railroads which are less than 100 miles in length, and which return railroad-owned equipment to the road from which received, shall not be required to report per diem accruals to numerous car owners throughout the country, but shall be attached to their connecting carriers for purpose of car-hire settlement.
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> (4) That common-carrier railroads which interchange freight cars with more than one

subscriber railroad, and which deliver to one or more subscribing carriers, freight cars which are received from another such carrier, and railroads 100 miles or more in length, regardless of the number of railroads with which they connect, shall make car-hire settlements direct with car owners in accordance with the per diem rules.

(5) That common-carrier railroads outside switching districts, other than those referred to in paragraph 4 hereof, shall pay per diem to connecting carriers on railroad-owned freight cars after deducting an average of two days free time per loaded freight car interchanged, settlements to be made at the end of each calendar month, except that no car hire need be paid on cars received for return loading with coal from coal mines which are customarily dependent upon connecting carriers for car supply.

Appellants' suit attacks paragraphs 2, 3, and 5 of this order. The specially constituted three-judge District Court unanimously adopted the findings of the Commission as its own and found that the Commission's order was in all respects supported by evidence. (R. 1169–1173.) It concluded that the order was as a matter of law not unreasonable, discriminatory, or confiscatory and dismissed the petition,

but without prejudice to petitioners to apply to the Commission at any time for a modification of the order when and if experience demonstrates that such order is working an

injury to petitioners, or any of them, or unfair results are following its application. (R. 1173.)

From the decree dismissing the petition, appellants appealed to this Court.

SUMMARY OF ARGUMENT

Paragraph 14 of Section 1 of the Interstate Commerce Act authorizes the Commission to establish reasonable car hire regulations and to fix proper car hire compensation. Paragraph 1 of the Commission's order in this case directs the payment of the same car rental to nonsubscribers as to subscribers, and paragraph 2 requires that similar switching reclaim allowances shall be made to nonsubscribers as to subscribers. The effect of these two paragraphs is to remove the discrimination existing under the per diem rules whereby cars of nonsubscribers were rented on a mileage basis and cars of subscribers on a per diem basis, and whereby switching reclaims allowed to subscribers were forbidden to nonsubscribers. In removing this discrimination the Commission was not required to give appellants an election between abandoning switching reclaims and extending them to all, since the authority of the Commission is not merely to remove discrimination, but affirmatively to establish reasonable rules.

The language and purpose of the Commission's order clearly indicate that nonsubscribers are required to allow switching reclaims to subscribers.

The manifest object of the order in this respect is to establish uniformity and equality of treatment as between subscribers and nonsubscribers.

Paragraph 3 of the order provides that short lines less than 100 miles in length which return freight equipment to the road from which received shall be attached to their connecting carriers for the purpose of car-hire settlement. Paragraph 3 thus requires subscribers to treat these short lines just as nonsubscribers are required to be dealt with under Rule 6 (b) of the per diem code. The effect of this paragraph of the order is to relieve these short lines of the burden of keeping small accounts with the countless car owners of the country. No substantial burden, if any, is imposed on any other class of railroad; and the saving in accounting expense to the railroad system as a whole may amounting to $500,000 a month. Paragraph 3 would seem therefore to be reasonable.

Paragraph 5 of the Commission's order requires that short lines referred to in paragraph 3 (other than switching lines) be granted two days' free time on all loaded freight cars interchanged with them, and totally exempts them from the payment of car hire on cars received for return loading with coal from coal mines which are customarily dependent upon the connecting trunk lines for car supply. Paragraphs 5 and 3 taken together allocate to the trunk line connections part of the cost to the short lines of the free time granted to shippers and consignees under the National Demurrage Rules. Par-

agraph 14 of Section 1 of the Act does not indicate the considerations which are to govern the distribution of car-hire costs, thus leaving it to the Commission upon investigation to determine the question. *Chesapeake & Ohio Ry. Co.* v. *United States*, 283 U. S. 35, 42; *Texas & Pacific Ry. Co.* v. *Gulf, C. & S. F. Ry. Co.*, 270 U. S. 266, 273. The Commission found that short lines were essentially feeders to their trunk line connections. They perform principally only terminal services and receive a small proportion of the line haul, while cars remain upon their tracks a disproportionate length of time. The Commission can not be said to have acted arbitrarily in giving consideration to this relationship and to the nature of the services performed by each of the parties thereto, and in deciding that by virtue of these facts the trunk lines should, to some extent, relieve their feeders of the cost of the free-time allowances made to shippers and consignees under the Demurrage Rules. Further support for the Commission's determination that free-time allowances to short lines are both proper and necessary is found in the history of the operation of the per diem rules.

ARGUMENT

THE ORDER OF THE COMMISSION IS SUPPORTED BY EVIDENCE AND IS NOT UNREASONABLE, DISCRIMINATORY, OR CONFISCATORY

Paragraph 14 of Section 1 of the Interstate Commerce Act (*supra*, p. 4), authorizes the Commission, after hearing, to establish reasonable rules,

regulations, and practices with respect to car service by railroads subject to the Act, including the compensation to be paid for the use of equipment not owned by the road using it. No question is raised here as to the constitutionality of the grant of power involved in this section of the Act, nor is it suggested that the Commission did not act within the general scope of its statutory authority. Appellants' contention (brief, pp. 47–48) is that Paragraphs 2, 3 and 5 of the Commission's order confiscate their property without due process and are so arbitrary, unreasonable, and unsupported by evidence as to transcend the limits of regulation.

Paragraph 1 of the Commission's order requires the payment of the same per diem rate on all cars regardless of whether or not their owners are subscribers to the per diem agreement. (R. 99.) Appellants do not attack this paragraph of the order.

Paragraph 2 of the Commission's order requires that similar switching reclaim allowances be made to nonsubscribers as to subscribers. (R. 99.) The testimony is unanimous that revenues from switching services are inadequate to cover the car-hire costs of carriers performing such service, and that reclaim allowances are not only desirable but necessary. (R. 150, 161, 710, 742, 909, 926–927, 929.) A witness representing appellants and other trunk line members of the A. R. A. (R. 207) testified that "the purpose of reclaim is to make the switching line whole in per diem which it pays on cars switched for a road haul carrier, on the theory

that the switching road is acting as a delivering carrier for the trunk line." (R. 910.) The necessity of furnishing an incentive to persuade carriers to subscribe to the per diem agreement is urged as justifying the denial of switching reclaims to nonsubscribers. But this consideration should not, and certainly need not, govern the Commission in establishing reasonable car-hire rules under the authority conferred upon it by paragraph 14 of Section 1 of the Act.

Appellants contend that if the failure to allow switching reclaims to nonsubscribers is discriminatory, they must be permitted to elect to extend the practice to all or eliminate it as to all. Three answers to this contention suggest themselves: First, the authority of the Commission is not limited to the removal of discrimination, but extends to the affirmative establishment of reasonable rules. Secondly, the order seems to permit an election. Paragraph 2 requires "that similar reclaim allowances shall be made to nonsubscribers as to subscribers." (R. 99.) Only equality of treatment is prescribed; no reclaim allowances need be paid at all. Thirdly, there is no likelihood that appellants seriously want the privilege of abandoning switching reclaims, in view of the fact that the practice is generally approved and regarded as necessary. (*Supra*, p. 20.)

Appellants construe the order as not requiring nonsubscribers to allow switching reclaims to subscribers. We submit that this imposes a technical

construction upon the language of the order not warranted by the record or the findings of the Commission. The Commission's obvious purpose was to place nonsubscribers on an equal footing with subscribers. The order is directed against all the common-carrier railroads in the United States, including both subscribers and nonsubscribers. The requirement that "similar reclaim allowances shall be made to nonsubscribers as to subscribers" can only mean that nonsubscribers and subscribers are to be treated alike. And even if the order could be construed as not affirmatively requiring nonsubscribers to pay switching reclaim allowances to subscribers, the short lines in this proceeding did not seek preferential treatment in the matter of switching reclaim allowances; they sought merely equality of treatment, and it is not to be supposed that they will refuse to allow switching reclaims to subscribers. The order in any event does not prevent appellants and the other subscribers from modifying the per diem rules so as to require nonsubscribers to pay such allowances to the subscribers. Since appellants can themselves cure the defect which they allege in the Commission's order, they are not in a position to challenge the order on this ground.

Paragraph 4 of the Commission's order in effect approves the method of making car hire settlements provided for by the per diem code, when applied to roads more than 100 miles in length, or to shorter roads which interchange equipment with

more than one subscriber connection. (R. 100.) All other roads, namely, short lines less than 100 miles in length which return cars to the subscriber road from which received, are dealt with in paragraphs 3 and 5. These roads will be hereinafter described as "short lines."

Paragraph 3 of the order provides that "short lines" shall not be required to report per diem accruals to the numerous car owners throughout the country but shall be attached to their connecting carriers for the purpose of car hire settlement. (R. 100.) As previously stated, under the per diem rules each subscriber accounts directly to the owner for the cars which it uses. (Rules 10, 11, 12, *supra*, pp. 10–11; R. 166–67.) On the other hand, under per diem rule 6 (a), when a freight car is interchanged by a subscriber with a nonsubscriber, the delivering subscriber continues responsible to the car owner for the per diem accruing while the car is in possession of the nonsubscriber, and rule 6 (b) requires the latter to pay its per diem to its subscriber connection. (*Supra*, p. 12; R. 195.) Paragraph 3 of the Commission's order therefore prescribes the same method of car-hire accounting for all "short lines" which the per diem code prescribes for nonsubscribers. Thus paragraph 3, except in so far as it includes "short line" subscribers, merely compels the trunk lines to do what they are already doing voluntarily.

Under Paragraph 3 "short lines" are required to account only to their trunk-line connections. The

latter are not required to keep special accounts with car owners for their "short-line" connections, but will include in their own reports to car owners the additional time that cars are held by their "short-line" connections. Trunk lines are the principal car owners (*supra*, p. 9), and paragraph 3 relieves them of receiving per diem reports from, and carrying accounts and making settlements with, the numerous "short-lines" (other than those with which they connect) over whose tracks their cars may pass. (R. 167.) Relief from the expense of this accounting may well offset the expense imposed upon them of having to account to other carriers for the car rental of their "short-line" connections. (R. 160, 167, 252, 253.) At least one witness was of the opinion that trunk lines would incur no additional burden under paragraph 3. (R. 825.) The same witness estimated that by permitting short lines to settle for car hire through their connections, $500,000 would be saved to the railroad system as a whole each month. (R. 825.) Even the witness who represented all the trunk-line members of the A. R. A. testified that "it would be desirable for short lines close to the ragged edge and having only one connection, to settle with their connecting line if a bond was given." (R. 219.) The chairman of the A. R. A. committee which drafted the original per diem code testified (R. 155):

> It would be practicable for short lines—take a stub-end feeder of say less than 25 miles—

> having only one connection to make settlement on all cars with its immediate connection, rather than with different owners, and I believe it is done. It is quite a job to settle per diem on even a small road at the end of the month, because of the large number of car owners.

Representatives of one short line after another testified to the enormous burden involved in setting up a car accounting office for the sole purpose of keeping small car hire accounts with all the countless car owners in the country. (R. 170, 511, 648, 651, 662, 667, 733, 745, 756.) Some short lines were compelled to cancel their subscriptions to the per diem agreement, and others had to refrain from subscribing in the first place, to avoid the cost of accounting directly to car owners. (R. 660, 715, 711, 712, 717.) It would seem to follow, therefore, that paragraph 3 of the order is supported by the evidence, and is not only not unreasonable, but involves a commendable plan calculated to benefit the railroad system as a whole. The purpose of paragraph 3 is not to benefit the short lines at the expense of the trunk lines, but to promote the public interest by obtaining economical transportation costs without imposing any serious burden on any class of carrier.

Paragraph 5 of the Commission's order provides, in effect, that the "short lines" referred to in paragraph 3 (excluding switching roads, which receive switching reclaim allowances under paragraph 2

of the order) shall be accorded an average of two days' free time on each loaded freight car interchanged, and totally exempts those lines from payment of car hire on cars received for return loading with coal from coal mines which are customarily dependent upon the connecting trunk lines for car supply. (R. 100.) Since paragraph 3 requires trunk lines to account for all the time cars are held both by themselves and their connecting short lines, with no free time allowances corresponding to those in paragraph 5, appellants complain that the trunk lines are made to assume a portion of the car hire expense of their short line connections. They allege that this constitutes an unconstitutional taking of their property. *Louisville & Nashville Railroad Company* v. *Central Stock Yards Company*, 212 U. S. 132.

Paragraph 14 of Section 1 of the Act does not specify the considerations which should govern the Commission in establishing reasonable car-hire rules. The Act, therefore, makes it a duty of the Commission to exercise its best judgment in determining the administrative questions involved. *Chesapeake & Ohio Ry. Co.* v. *United States*, 283 U. S. 42, 35; *Texas & Pacific Ry. Co.* v. *Gulf, C. & S. F. Ry. Co.*, 270 U. S. 266, 273.

At the hearings before the Commission the short lines urged the Commission to consider the fact that their earnings from local rates or divisions of joint rates can not stand the absorption of all

the car hire required to be paid by them under the per diem code. (R. 689, 692–693, 43.) They explained that their car-hire costs bear an abnormal ratio to their total revenue and on particular hauls exceed the total revenue earned. (R. 689, 708, 717, 723, 801, 806, 938.) Car-hire costs, however, are not generally considered in fixing divisions of joint rates. *New England Divisions Case,* 62 I. C. C. 513, 538. And many railroads consider the questions of car hire and divisions of joint rates as separate and distinct. (R. 220, 751, 807.) The Commission, therefore, with the approval of counsel representing appellants, ruled that testimony relative to divisions was irrelevant. (R. 829, 912, 933.)

Another contention of the short lines was that a distinction must be made between car ownership and car use; that, regardless of the ownership of cars, they are used by the short lines and their trunk-line connections jointly; and that the car-hire costs incurred in the joint use of cars might reasonably be distributed between the participating railroads, with proper attention being paid to the character of each of the roads and the nature of the services performed by each. (R. 655, 680, 687, 693, 724, 749.) It is substantially this view that was adopted by the Commission.

"Short lines" are essentially "feeder" lines to their trunk-line connections. (R. 739, 801, 35.) Built for the purpose of connecting particular com-

munities or industries with the trunk lines, they act as delivering carriers for the latter, performing principally terminal services. (R. 659, 676, 679, 680, 689, 35.) They receive cars from their trunk-line connections, whether empties for loading or loaded cars for unloading, in wholesale quantities, and perform the switching necessary for making retail deliveries and collections, and returning cars to the trunk lines in wholesale lots, loaded cars being returned ready to move on.

"Short lines" are often required to bill freight through to destination and to perform other incidental terminal duties such as spotting, weighing, loading, and reloading when necessary. (R. 676, 689–690.) Traffic over "short lines" may move all or practically all one way, either inbound or outbound, the cars being required to go empty, bringing in no revenue in the opposite direction. (R. 758, 772, 961.) Due to the considerable amount of time required for the performance of terminal duties, cars are likely to remain on the tracks of "short lines" a disproportionate length of time. (R. 35.) Trunk lines, on the other hand, obtain by far the greater proportion of the line haul. (R. 774, 807.)

Under the National Demurrage Rules shippers and consignees are allowed two days' free time for loading and unloading and added free time when Sundays or holidays intervene or when stormy weather prevents the handling of particular commodities. (R. 156, 157, 687, 728, 733, 755.) Under

the demurrage rules, also, railroads do not collect any demurrage on coal cars held on mine sidings upon the theory that in times of car shortage the supply of coal cars is better regulated by car distribution rules than by demurrage charges. (R. 155, 645, 790–792, 794, 804, 814.) In fact, the Commission has forbidden the collection of demurrage charges by short lines on cars held on mine sidings. *Demurrage on Coal and Coke,* 102 I. C. C. 554. The road allowing the free time provided for under the demurrage rules must, nevertheless, under the per diem rules, pay the full per diem on cars not owned by it. In view of the character of the "short lines", the nature of their relationship to their trunk line connections and of the services performed by each, the Commission found that a proper apportionment of the car hire costs incurred upon cars used by them jointly, will be obtained if the trunk lines relieve short lines to some extent of the cost of the free time allowed by the demurrage rules.

The finding of the Commission that car owners are entitled to $1.00 per day for the use of their cars is not inconsistent with its determination, in paragraph 5 of the order, of the proper apportionment of car hire cost among joint car users. Appellants point also to the duty of common carriers to furnish an adequate supply of cars in which to haul their traffic, but appellants also concede (brief, p. 48) that it is their duty to permit the use of their cars by other carriers. Section 1 (12) of the Act (*supra,* p. 3) provides:

> It shall also be the duty of every carrier by railroad to make just and reasonable distribution of cars for transportation of coal among the coal mines served by it, whether located upon its line or lines customarily dependant upon it for car supply.

Since the cars of other carriers may be properly used by "short lines," it becomes the duty of the Commission equitably to apportion the cost of the use of such equipment among the carriers parties to the transportation.

We have thus far regarded the question of allowance of free time to short lines as a novel one. In fact, the question is as old as car hire itself; and the whole history of car-hire settlement demonstrates that allowing free time to short lines is not unreasonable. Prior to the adoption of the per diem code in 1902 the short lines paid little, if any, car hire. (R. 157.) The change from the mileage to the per diem basis of determining car-hire charges was radical. (*Supra,* p. 7; R. 146–147.) Complaints against the change came equally from short lines and from trunk lines doing a switching business. (R. 146.) The switching reclaim allowance was conceived to conciliate the trunk lines whose cooperation was necessary to the successful adoption of the per diem code. (*Supra,* 11; R. 142, 150, 151.) But the switching reclaim rules apply only to switching done within recognized switching districts for a switching charge. (R. 210.) Only trunk lines generally fall within that classification.

(R. 163.) Short lines outside of switching districts which receive divisions of joint rates perform substantially the same service as the switching roads within such districts, and it was testified, and the Commission found, that the distinction between the two was arbitrary and the result of compromise. (R. 150, 160, 163, 164, 171, 252.)

The needs of short lines were given little consideration except that the per diem code left subscribers free to make special arrangements with short lines (R. 144, 145, 146, 160, 162, 163, 164) and it became customary to allow many lines outside of switching districts two days or more free time. (R. 987.) But since 1922, when Rule 6 (b) was adopted, free time and reclaim allowances to nonsubscribers have been prohibited. (R. 1068, Code p. 12; *supra*, p. 12.)

Despite the mandatory language of the rule, all subscribers have not complied with it. Several illustrations of short lines which settle for car hire on a basis other than that required by Rule 6 (b) are contained in the report of the Commission. (R. 35–39.) The following statement taken from the Commission's report (R. 39) shows the number of nonsubscriber railroads outside of Chicago which interchange traffic with each of the trunk lines referred to therein, the number which pay straight per diem, and the number which settle on some other basis.

TABLE

Trunk line	Nonsubscriber connections		
	Total	Which pay straight per diem	Which settle on some other basis
Burlington	18	2	16
Chesapeake & Ohio	10	5	5
Great Northern	21	0	21
L. & N.	10	2	8
Missouri Pacific	20	3	17
New Haven	8	5	3
North Western	9	6	3
Pennsylvania	55	6	49
Soo Line	12	4	8
Southern	27	20	7
Southern Pacific (Pacific Lines)	46	24	22
Southern Pacific (Texas and Louisiana)	14	10	4
St. L. S. W.	7	3	4
Union Pacific	15	6	9
B. & O.[1]			

[1] Exact number not given.

Appellants (brief pp. 28, 29) regard this table as misleading because it includes 67 industrial roads among the nonsubscriber roads which settle upon other than the straight per diem basis, industrial roads being expressly exempted from rule 6 (b). But the order of the Commission does not distinguish between industrial and other short lines. (*Supra*, p. 15.) And even eliminating the 67 industrial roads, the table still shows that 14 trunk lines violate rule 6 (b) with respect to 109 out of a total of 272 nonsubscriber connections. It should be noted that the Great Northern has special arrangements with every one of its nonsubscriber connections. (R. 860.) It was testified that the Missouri Pacific enters into special arrangements with all nonsubscriber connections which insist thereon. (R. 865.) The Burlington refused to comply with Rule 6 (b) when it learned

that its nonsubscriber connections could not afford to pay the full per diem without free time. (R. 941.) Other subscribers to the per diem code would be glad to make allowances in violation of Rule 6 (b), but feel constrained by the rule. (R. 677, 686, 696.)

Out of 651 nonsubscribers to the code, 123 settle for car hire on a basis other than that provided for in the code. (R. 196.) And out of 185 short line nonsubscribers not industrially owned (the latter being excepted from Rule 6 (b)) 41 (or 22 per cent) make car hire settlements contrary to the rule. (R. 890, 1039.) Those subscribers which now operate under favorable arrangements face the constant threat that Rule 6 (b) will suddenly be enforced against them.

The propriety and necessity of some allowance by trunk lines to their short line connections for car hire costs has thus always been recognized. During the period of Federal control of railroads the Railroad Administration allowed two days free time to a great many short line roads. (R. 647, 714, 717, 759.) It is not material that the waiver of certain claims against the Railroad Administration constituted technical consideration for this allowance. (R. 990.) The fact is that the need for allowing short lines free time was recognized. The order of the Commission in this case finally establishes a uniform requirement as to free time applicable to all short lines less than 100 miles in length which return cars to the roads from which

received, and uniformity has been said to be the paramount purpose of the Act to Regulate Commerce. *Great Northern Railway Company* v. *Merchants Elevator Company,* 259 U. S. 285, 290. The A. R. A. recognizes that uniformity is desirable, but it believes that uniformity should be obtained by the strict enforcement of rule 6. (b). (R. 196.)

In *Atlantic Coast Line Railroad Co.* v. *Riverside Mills,* 219 U. S. 186, involving the validity of the Carmack amendment, this Court said (p. 206):

> But it is said that the act violates the Fifth Amendment by taking the property of the initial carrier to pay the debt of an independent connecting carrier whose negligence may have been the sole cause of the loss. But this contention results from a surface reading of the act and misses the true basis upon which it rests. The liability of the receiving carrier which results in such a case is that of a principal for the negligence of his own agents.

So here, the "feeder" relationship between "short lines" and their trunk line connections justifies an allocation of car-hire costs between them, not on the arbitrary basis of the number of days that cars happen to remain on the tracks of each, but according to the substantive services performed by each party to the relationship. We submit that the determination of the Commission is not so arbitrary or unreasonable as to transcend the power conferred upon it to regulate car-hire settlement. *United States* v. *New River Company,* 265 U. S. 533,

542. On the contrary, the Commission's order would seem to be in full accord with the dominant policy of the Transportation Act, 1920, which this Court has repeatedly approved, of securing for the United States an adequate, unified, and economical railroad system. *Wisconsin Railroad Commission* v. *Chicago, Burlington & Quincy Railroad Co.*, 257 U. S. 563; *Dayton-Goose Creek Ry.* v. *United States*, 263 U. S. 456; *Assigned Car Cases*, 274 U. S. 564, and *New England Divisions Case*, 261 U. S. 184.

Appellants' attack upon the classification involved in paragraphs 2 to 5, inclusive, of the Commission's order (brief p. 96) appears on its face to be without merit and trivial. At the risk of repetition, the classes created by the Commission's order are restated here. Paragraph 2 retains the classification of switching carriers provided for in the per diem code and merely abolishes the distinction, found by the Commission to be unreasonable, between subscribers and nonsubscribers. Under paragraphs 3, 4, and 5, common carriers more than 100 miles in length are required to make car-hire settlements in accordance with the provisions of the per diem rules. The 100-mile classification is similar to that employed by the A. R. A. in permitting only roads 100 miles or more in length to become members (as distinguished from associate members) and to have the right to vote upon the adoption or revision of per diem rules. (*Supra*, p. 8.) A separate classification is made of lines less than 100 miles in length which, having

one or more connections, are able to and do return all interchanged freight equipment to the road from which received. The basis of this classification is the obvious fact that unless freight equipment is returned to the road from which received, settlements with connecting carriers provided for in paragraph 3, or the free-time allowances provided for in the paragraph 5, could not be practically accomplished. Paragraph 5 is further limited to railroads outside switching districts, since free time to roads in switching districts is governed by switching reclaim allowances.

CONCLUSION

It is respectfully submitted that the decree below should be affirmed.

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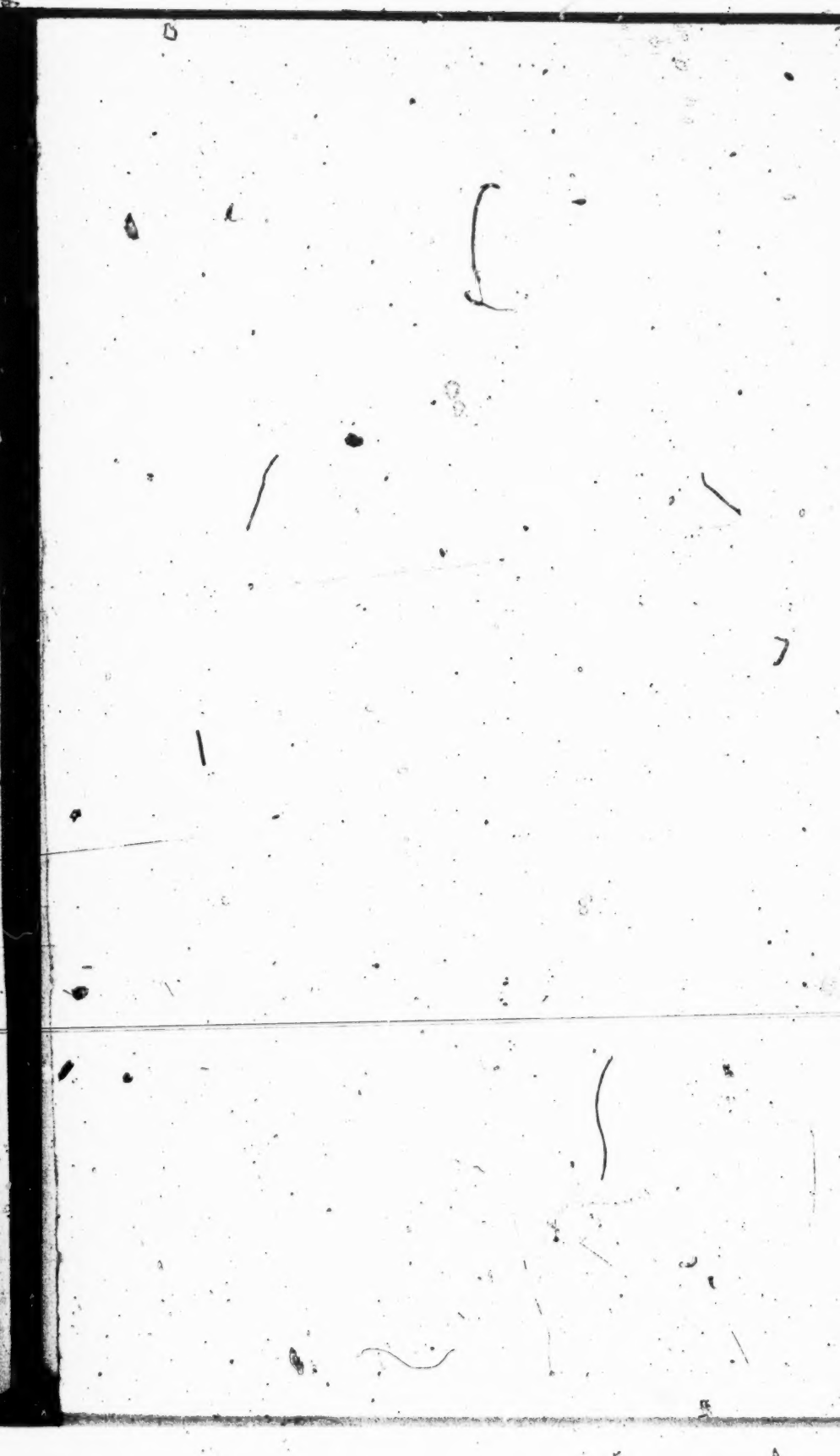

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CHARLES ELMORE C
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 69.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL., *Appellants*,

v.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, *Appellees*.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

BRIEF FOR SOUTH MANCHESTER RAILROAD COMPANY, APPELLEE.

ROBERT E. QUIRK,
Solicitor for Appellee.

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Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

BRIEF FOR SOUTH MANCHESTER RAILROAD COMPANY, APPELLEE.

STATEMENT.

Proceedings in the Lower Court.

This is an appeal from the final decree of a three-judge statutory court sitting in the Northern District

of Illinois, Eastern Division, composed of Circuit Judge Evans and District Judges Carpenter and Woodward.

The lower court did not write an opinion in this case. Its action on the case is contained in fourteen findings of fact and four conclusions of law not officially reported but which appear at pages 1169 to 1173, inclusive, of the printed record. The appellants, plaintiffs below, petitioned the court for a permanent injunction restraining the enforcement of an order entered by the Interstate Commerce Commission July 15, 1931, in docket 17801, *Rules for Car Hire Settlement*, reported in 160 I. C. C. 369, and 165 I. C. C. 495 (R. 17-97) on the ground that the order of the Commission is invalid because not supported by sufficient evidence and because the order is arbitrary and will operate to confiscate the property of appellants without due process of law and without compensation.

The order entered by the Commission operates upon all common carriers by railroad within the United States and affects the cars owned and used by them in interchange service. There are in the United States 1731 steam railroads which operate 313,265 miles of track, and which own 2,625,886 freight cars, and there are 169 electric railroads which operate 11,940 miles of track and own 7,951 freight cars. Of this number 1347 steam railroads and 62 electric railroads are subscribers to the Per Diem agreement of the American Railway Association (R. 1066). This suit was brought by 12 Class I steam railroads the appellants here.

The final decree of the court below denied the re-

lief sought and dismissed the petition of appellants without prejudice to their right to appeal to the Interstate Commerce Commission for a modification of the order entered, when and if experience demonstrates that such order operates to the injury of petitioners.

Proceedings Before the Commission.

On January 4, 1926, the Commission entered an order instituting a nation-wide investigation into and concerning the rules for car hire settlement for the use and detention of freight cars, in effect between all common carriers by railroad in the United States, with the view to making such order or orders in the premises as may be warranted by the record.

By that order and by orders subsequently entered, the Commission reopened numerous cases which had been decided, as to disputes between carriers concerning car hire matters, and consolidated these with other pending cases which had not been decided with the general investigation. All of these cases, including the complaint of the South Manchester Railroad Company against the New York, New Haven and Hartford Railroad, docket 16420, were consolidated with the general investigation and were finally embraced and disposed of by the reports and order made by the Commission.

The record before the Commission consists of approximately 4800 pages of transcript and 540 exhibits. The evidence deals with practically every phase of the rules, regulations and charges affecting common carriers by railroad in the interchange of freight cars both as between the car owners and car users and as between car users.

Two reports were made by the Commission. The first report (R. 17) contained its findings of fact and conclusions. No order was entered in connection with that report. As certain of the respondents, the appellants here and others, refused to comply with the report and findings of the Commission, the Commission made a second report and entered an order on July 15, 1930 (R. 97) to give effect to the findings contained in its first report.

The American Railway Association is a voluntary association of railroads. Its membership includes practically all Class I railroads in the United States which represent about 98 per cent of the railroad mileage and 99 per cent of railroad-owned freight car equipment in the United States.

The issues before the Commission were shaped largely by the contest between the American Railway Association and the American Short Line Railroad Association as to what would constitute just and reasonable rules, regulations and charges in respect to the interchange of freight cars between trunk lines and short lines. Counsel for the American Railway Association aimed to demonstrate to the Commission that the rules made by that association are sufficient to meet the needs of all railroads in respect to car hire interchange; whereas counsel for the American Short Line Railroad Association undertook to show that the rules of the American Railway Association were not suited to the settlement of car hire interchange as between trunk lines and short lines. It will thus be seen that the Commission was confronted with the task of determining whether the rules, regulations and practices governing car hire matters es-

tablished by the trunk line membership in the American Railway Association were just and reasonable as applied to all common carriers by railroad. The dissatisfaction concerning these rules and charges on the part of short lines arises mainly from the fact that the short lines have had no voice in making the rules and that they have been made to suit the conditions of car interchange as between trunk lines and not as between trunk lines and short lines. In the main the rules prescribed by the Commission do not disturb the Per Diem Code of the American Railway Association in so far as it applies to the interchange of cars between trunk lines. The order of the Commission requires a change in the rules in respect to the interchange of cars between trunk lines and certain short lines, and the rules prescribed by it reflect the conditions surrounding the interchange between short line railroads and trunk line railroads in the matter of car hire settlement.

The record before the Commission showed that there is no uniformity in rules or charges governing the interchange of cars between trunk lines and their short line connections. In some instances the short lines were allowed to deduct from 1 to several days as free time before computing the car rental due to the trunk line connection or to the owner of the car. In other instances the short line settled directly with the car owner, while in still others it settled with its trunk line connection. Subscribers to the Per Diem Code of the American Railway Association were treated differently by members of that association from non-subscribers and non-members of that association. For example, while the basic principle of

the Per Diem Code is that every car owner shall be paid reasonable compensation by the user of the car for each day the car is held by the user, that principle was not applied as between a subscriber to the Per Diem Code and a non-subscriber. The trunk lines insisted on settling with the non-subscriber for the use of cars of the non-subscriber by the subscriber on a mileage basis rather than on the basis of the Per Diem Code of $1 per car day. What are called reclaim allowances were made to carriers in respect to cars interchanged at terminals in a switching service by subscribers to the Per Diem Code, but were not made in respect to cars interchanged by a subscriber and a non-subscriber in the same class of switching service.

The Commission found upon a comprehensive record that certain of the rules established by the trunk line railroads through the American Railway Association were and would be unreasonable and in lieu thereof it prescribed just and reasonable rules and regulations. (R. 92-93)

The findings of the Commission, which are made a part of the order entered are shown below for the convenience of the Court (R. 92-93):

> Upon this record we find that:
>
> 1. Common-carrier railroads, whether subscribers to the per diem agreement of the American Railway Association or non-subscribers, are entitled to receive reasonable compensation in the form of a daily rental for the use of their general-service freight cars when on foreign lines, and that the present per diem charge of $1 per car day reasonably compensates car owners for average car ownership and maintenance costs. The

reasonableness of this per diem rate is not questioned.

2. The per diem rules are unreasonable to the extent that they do not authorize payment of the same daily rental of $1 per car day to common-carrier nonsubscribers as to subscribers for the use of general-service freight cars.

3. Per diem rule 5 is unreasonable to extent that it prohibits car-hire allowances to nonsubscribers which perform terminal switching, as the latter term is defined by the switching-reclaim rules of the American Railway Association, and should be so amended as to provide for similar reclaim allowances to nonsubscribers as to subscriber lines.

4. Paragraph (b) of per diem rule 6, which pertains to car-hire settlements with nonsubscribers, is unreasonable and should be so amended as to direct subscribers to make settlements with nonsubscribers in conformity with our findings herein.

5. It is uneconomical and unreasonable to require short-line carriers which return railroad-owned equipment to the road from which received to report per diem accruals to numerous car owners throughout the country. Such lines should be attached to their connecting carriers for purpose of car-hire settlement.

6. For the future it will be reasonable for common-carrier railroads which interchange freight cars with more than one subscriber railroad, and which deliver to one or more subscribing carriers, cars which are received from another such carrier, to make car-hire settlements direct with car owners in accordance with the per diem rules, and for railroads 100 miles or more in length, regardless of the number of railroads with which they connect, to so report per diem to car owners.

7. For the future it will be reasonable for com-

mon-carrier railroads outside switching districts, other than those referred to in finding 6 to pay per diem to connecting carriers on railroad-owned cars after deducting an average of two days' free time per loaded freight car interchanged, settlements to be made at the end of each calendar month, except that no car hire should be paid for cars received for return coal loading from coal mines.

8. The modified demurrage bases of settlement now in force with the Chicago Short Line, Illinois Northern, Manufacturers' Junction, Pullman, Bay Terminal, Benwood & Wheeling Connecting, Birmingham Southern, Genesee & Wyoming, Lake Erie & Fort Wayne, Lakeside & Marblehead, Lime Rock, McKeesport Connecting, Moshassuck Valley, Northampton & Bath, Tionesta Valley, Valley Railroad, and Valley & Siletz are unreasonable and should be abrogated, and that for the future it will be reasonable for connecting carriers to make car-hire settlements with these railroads in conformity with the general findings herein; provided, however, that the modified demurrage bases of settlement now in operation on such of these lines as perform switching service should be continued in force for a reasonable time, but not to exceed six months from the date hereof, to enable interested carriers to determine the amount of time actually required by each of such railroads to handle freight cars in terminal-switching service.

9. The existing basis of car-hire settlement with the Big Sandy & Kentucky River, Greenville & Northern, Jefferson & Northwestern, Kosciusko & Southeastern, Morehead & North Fork, Skaneateles, South Manchester, and Virginia Blue Ridge, is unreasonable, and that for the future it will be reasonable for connecting carriers to make car-hire settlements with these railroads in conformity with the general findings herein. Inasmuch as the bases of settlement here proposed

are for general application by all common carriers by railroad throughout the country, no retroactive adjustments will be required.

No order will be entered at this time, but carriers will be expected to modify their rules and practices to conform with our conclusions herein. If this is not done within a reasonable period, the matter may be brought to our attention for appropriate action.

A report of reclaims allowed to short-line railroads pursuant to findings herein and any changes subsequently made therein should be filed with us as soon as determined upon.

The Interest of Appellee, the South Manchester Railroad Company.

As the South Manchester Railroad Company, an appellee of record here, was a party to the proceeding before the Interstate Commerce Commission, it intervened in the court below as a defendant in support of the report and order of the Commission. (R. 126).

The South Manchester Railroad Company, hereinafter called the South Manchester, is a corporation of Connecticut. It operates approximately 2 miles of main line track from South Manchester, Conn., to Manchester, Conn., which is about 8 miles from Hartford, and 1.21 miles of side track. It is engaged in transporting both state and interstate commerce and has an interchange connection with the New York, New Haven and Hartford Railroad at Manchester. The South Manchester is a standard gauge railroad. At the time the record was made before the Commission 68 per cent of the freight tonnage handled by the South Manchester consisted of inbound shipments of coal. It unloaded 5 cars to each car loaded with

outbound tonnage. The car hire expense of the South Manchester under the per diem rules and regulations found unreasonable by the Commission in this proceeding (R. 93) are equivalent to one-fourth of its operating expense and one-seventh of its operating revenues. The situation of the South Manchester in relation to car hire settlement with trunk lines is similar to that of many other short line railroads. Under the rules condemned they were compelled to assume a car hire expense out of proportion to their earnings and participation in the line hauls.

The Question.

For many years prior to the institution of the investigation by the Commission into and concerning the rules for car hire settlement there had been much controversy between short line railroads and their trunk line connections as to the reasonableness and propriety of these rules and charges as applied to short lines. The investigation was instituted by the Commission upon its own motion but it was prompted to make the investigation by a petition filed with it by the American Short Line Railroad Association. The car hire rules generally in effect throughout the United States among trunk lines are the rules contained in the Per Diem Code established by the American Railway Association, a voluntary organization of railroads. Railroads such as the South Manchester, which have less than 100 miles of track, are not eligible to full membership in that association but are eligible to become associate members. An associate member has no voice in making or in modifying the car hire rules. Such a short line railroad may, however, subscribe to the Per Diem Code of the

American Railway Association. The South Manchester is not a subscriber to this code, but the trunk line members of the American Railway Association, subscribers to the Per Diem Code, have insisted that short line non-subscribers to that code settle car hire matters under the provisions of and at the per diem rate of the code. The basic principle of the Per Diem Code is that compensation, called per diem, should be paid by the user of a freight car to the railroad owning the car for the time the car is in the possession of the user. (R. 141) But this is not applied as to cars owned by a non-subscriber.

Since the war the rate of compensation for car hire has been and is $1 per car day. In finding No. 1 of its general findings (R. 92) the Commission concluded that common carrier railroads, whether subscribers to the per diem agreement of the American Railway Association or non-subscribers, are entitled to receive reasonable compensation for the use of their general service freight cars, when on foreign lines "and that the present per diem charge of $1 per car day reasonably compensates car owners for average car ownership and maintenance costs. The reasonableness of this per diem rate is not questioned."

As found by the Commission, the reasonableness of the per diem rate of $1 per car day as compensation from the user of the car to the car owner was not questioned in the proceeding before it. The question around which the controversy centered before the Commission was the reasonableness of the rules, regulations and car hire charge involved in the Per Diem Code as between car users under the varying circumstances and conditions under which the cars are used. We concede that generally as be-

tween the car owner and the car user the per diem charge of $1 is reasonable compensation as found by the Commission for *average* car ownership under average conditions. But, as an examination of the findings of the Commission (R. 92) and its order entered July 15, 1930 (R. 99) will show, it prescribed a set of rules and regulations to govern various classes of common carriers by railroad subject to its jurisdiction, not only as between the car user and the car owner but as between car users under the varying circumstances and conditions in which these classes of common carriers interchanged and use cars.

Omitting the first three paragraphs, which merely recite the character of the proceeding, the pertinent part of the Commission's order of July 15, 1930, which is here under attack (R. 99) provides:

> "*It is further ordered,* That the said respondents herein be, and they are hereby, notified and required to establish, on or before October 1, 1930, and thereafter to maintain and observe, rules with respect to car-hire settlements which shall provide:
>
> (1) That the same daily car rental shall be paid to common-carrier nonsubscribers as respondents contemporaneously pay to subscribers to the per diem rules agreement of the American Railway Association, for the use of general-service freight cars.
>
> (2) That similar reclaim allowances shall be made to nonsubscribers as to subscribers of the per diem rules agreement, in connection with cars handled in terminal switching service, as the latter term is defined by the switching reclaim rules of the American Railway Association.
>
> (3) That short-line railroads which are less than 100 miles in length, and which return rail-

road-owned equipment to the road from which received, shall not be required to report per diem accruals to numerous cars owners throughout the country, but shall be attached to their connecting carriers for purpose of car-hire settlement.

(4) That common-carrier railroads which interchange freight cars with more than one subscriber railroad, and which deliver to one or more subscribing carriers, freight cars which are received from another such carrier, and railroads 100 miles or more in length, regardless of the number of railroads with which they connect, shall make car-hire settlements direct with car owners in accordance with the per diem rules.

(5) That common-carrier railroads outside switching districts, other than those referred to in paragraph 4 hereof, shall pay per diem to connecting carriers on railroad-owned freight cars after deducting an average of two days free time per loaded freight car interchanged, settlements to be made at the end of each calendar month, except that no car hire need be paid on cars received for return loading with coal from coal mines which are customarily dependent upon connecting carriers for car supply.

It is further ordered, That this order shall continue in effect until the further order of the Commission.

And it is further ordered, That all unexpired orders, or parts of unexpired orders, heretofore entered in the proceedings consolidated with and made a part of this proceeding, be, and they are hereby, vacated and set aside in so far as in conflict with our order herein."

The order of the Commission speaks for itself. Briefly stated, it requires (a) that non-subscribers and subscribers to the Per Diem Code of the American Railway Association shall be treated alike, (b)

that reclaim allowances in respect to cars interchanged in terminal switching services shall be made similarly to non-subscribers and to subscribers to the Per Diem Code, (c) that short line railroads which are less than 100 miles in length and which return railroad-owned cars to the road from which received shall not be required to report per diem accruals to the numerous car owners throughout the country but shall report to their immediate connections, (d) that railroads which interchange freight cars with more than one subscriber railroad and which deliver to one or more subscriber railroad freight cars which are received from another such railroad, and railroads of 100 miles or more in length shall make car-hire settlements directly with the car owners in accordance with the Per Diem Code, (e) that railroads outside of switching districts other than those referred to in paragraph 4 of the order shall pay per diem to connecting railroads on railroad-owned freight cars after deducting an average of two days free time per loaded freight car interchanged, settlements to be made at the end of each calendar month, and (f) that no car hire need be paid on cars received for return loading with coal from coal mines which are customarily dependent upon connecting carriers for car supply.

The appellants contended in the court below and contend here that the order of the Commission is invalid and should be set aside because they say the evidence is insufficient to sustain the requirements of the order, that it is arbitrary, that the order will operate to confiscate the property of appellants and other carriers similarly situated and will deprive them of their property without due process of law

and without compensation in violation of the provisions of the Fifth Amendment of the Constitution of the United States.

The court below, in its findings of fact and conclusions of law, (R. 1169-1173) found that the Commission had jurisdiction to institute the proceeding and to make the order attacked, that each finding of the Commission is supported by evidence, that the evidence justified the classification for purposes of determining car rentals and car hire settlements of railroads into two classes (a) railroads whose mileage exceeds 100 and (b) railroads whose mileage is less than 100 miles, and that the evidence supports the finding of the Commission for relieving railroads of car rental on cars placed at coal mines for coal loading by carriers which are customarily dependent upon connecting carriers for car supply, that there is a fact basis for the exceptions in paragraph 5 of the Commission's order, that the finding of the Commission that the same car rental be applied to non-subscribers as to subscribers of the American Railway Association is not unreasonable or discriminatory, and that the provisions exempting certain railroads which are less than 100 miles in length from the requirement to report per diem accruals to car owners throughout the country is not unreasonable or discriminatory.

The question before this Court is whether or not there is any reversible error in the findings of fact and the conclusions of law made by the court below.

STATUTES INVOLVED.

Paragraph 10 of section 1 of the Interstate Commerce Act (40 Stat. L. 101 and 41 Stat. L. 476; U. S. Code Title 49, sec. 1) provides:

(10) "The term 'car service' in this Act shall include the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, and other vehicles used in the transportation of property, including special types of equipment, and the supply of trains, by any carrier by railroad subject to this Act."

Paragraph 11 of section 1 of the Interstate Commerce Act (41 Stat. L. 476; U. S. Code Title 49, sec. 1) provides:

(11) "It shall be the duty of every carrier by railroad subject to this Act to furnish safe and adequate car service and to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service; and every unjust and unreasonable rule, regulation, and practice with respect to car service is prohibited and declared to be unlawful."

Paragraph 12 of section 1 of the Interstate Commerce Act (41 Stat. L. 476; U. S. Code Title 49, sec. 1) provides:

(12) "It shall also be the duty of every carrier by railroad to make just and reasonable distribution of cars for transportation of coal among the coal mines served by it, whether located upon its line or lines or customarily dependent upon it for car supply. During any period when the supply of cars available for such service does not equal the requirements of such mines it shall be the duty of the carrier to maintain and apply just and reasonable ratings of such mines and to count each and every car furnished to or used by any such mine for transportation of coal against the mine. Failure or refusal so to do shall be unlawful, and in respect of each car not

so counted shall be deemed a separate offense, and the carrier, receiver, or operating trustee so failing or refusing shall forfeit to the United States the sum of $100 for each offense, which may be recovered in a civil action brought by the United States."

Paragraph 14 of section 1 of the Interstate Commerce Act (41 Stat. L. 476; U. S. Code Title 49, sec. 1) provides:

> (14) "The Commission may, after hearing, on a complaint or upon its own initiative without complaint, establish reasonable rules, regulations, and practices with respect to car service by carriers by railroad subject to this Act, including the compensation to be paid for the use of any locomotive, car, or other vehicle not owned by the carrier using it, and the penalties or other sanctions for non-observance of such rules, regulations or practices."

APPELLANTS' SPECIFICATION OF ERRORS.

Appellants make the following specification of errors:

> 1. The lower court erred in failing to hold that Paragraphs (2), (3) and (5) of the Commission's said order, which require appellants to pay the car accounting and car hire expenses of other common-carrier railroads and permit the use of freight cars owned by appellants by such other common carriers, all without the payment of any compensation or adequate compensation to appellants, were void and beyond the power and jurisdiction of the Commission, and in failing to hold that said paragraphs of the order operate to confiscate the property of appellants and de-

prive them of their property without due process of law and without compensation, in violation of their rights under the Fifth Amendment to the Constitution of the United States.

2. The lower court erred in failing to hold that the evidence in the record of the proceedings before the Commission was insufficient to support the requirements of Paragraphs (2), (3) and (5) of said order and in holding that such evidence fully supported each finding of the Commission.

3. The lower court erred in failing to hold that the evidence in the record of the proceedings before the Commission was insufficient to afford a fact basis for the requirements of Paragraphs (2), (3) and (5) of said order.

4. The lower court erred in holding that the statement of the evidence introduced in the proceedings before the Commission, as contained in the Commission's report dated January 7, 1929, fully covers the controverted issues.

5. The lower court erred in failing to hold that the classification of railroads created by the said order of the Commission was arbitrary, unreasonable and illogical and was not supported by any evidence in the record of the proceedings before said Commission.

6. The lower court erred in failing to hold Paragraphs (2), (3) and (5) of the said order void for the reason that, as shown by the evidence in the record of the proceedings before the Commission and the reports of the Commission, the requirements of said paragraphs of the order were based upon insufficient and improper evidence pertaining to an issue not involved in the proceedings before the Commission.

7. The lower court erred in failing to hold that the Commission's order in void as being arbitrary, unreasonable and illogical and unsupported by and contrary to the findings and the evidence in the case.

SUMMARY OF ARGUMENT.

1. Paragraph 14 of section 1 of the Interstate Commerce Act confers upon the Commission the power, after hearing, with or without complaint, to establish reasonable rules, regulations and practices with respect to car service, including the compensation to be paid for the use of the cars not owned by the carrier using them and the penalties or other sanctions for non-observance of such rules, regulations or practices. It is, therefore, clear that the Commission had the power to make the order attacked provided it was based upon substantial evidence. As was stated in *I. C. C. v. Ill. C. R. Co.*, 215 U. S. 452, the power to make the order and not the mere expediency or wisdom of having made it is the question. As the order of the Commission is supported by evidence it is conclusive upon the courts. *Western Paper Makers Chemical Co. v. U. S.*, 271 U. S. 268; *Skinner & Eddy Corporation v. U. S.*, 249 U. S. 557; *New England Divisions case*, 261 U. S. 184; *Virginian Rwy. Co. v. U. S.*, 272 U. S. 658; *Assigned Car cases*, 274 U. S. 564.

2. Under its power to establish reasonable rules, regulations and practices in respect to car service and to determine the compensation to be paid for the use of cars, the Commission may prescribe different rules for different classes of common carriers. It is not error for the Commission to prescribe different rules and regulations and a different basis for compensation applicable to certain classes of railroads under 100 miles in length. *Railway Mail Pay case*, 165 I. C. C. 774; *Railway Mail Pay case*, 144 I. C. C. 675; *Railway Mail Pay case*, 56 I. C. C. 1; *St. L. I. M. & S.*

R. Co. v. Arkansas, 246 U. S. 518; *C. R. I. & P. Co. v. Arkansas*, 219 U. S. 453; *Wilson v. New*, 243 U. S. 332.

3. There is no merit in the appellants' contention that the order of the Commission is void upon the ground that it operates to confiscate the property of appellants and to deprive them of their property without due process of law and without compensation. The Commission has complete jurisdiction over the subject matter. The appellants are common carriers whose property is devoted to public use. Therefore they must yield obedience to the order if, as we contend, it was made in the legitimate exercise of the power of the Commission and of Congress. *Munn v. Illinois*, 94 U. S. 113; *C. B. & Q. v. Cutts*, 94 U. S. 155; *A. C. L. R. Co. v. N. C. Corp. Com.*, 206 U. S. 1; *Wisconsin M. & P. R. Co. v. Jacobson*, 179 U. S. 287; *United States v. Berwind White Coal Mining Company* (the Assigned Car cases) 274 U. S. 564. The Fifth Amendment refers to direct appropriation and not to injury incident to the exercise of a lawful power in the public interest. *Legal Tender cases*, 12 Wall. 550; *United States v. Lynah*, 188 U. S. 445; *C. B. & Q. R. R. Co. v. Illinois*, 200 U. S. 561.

4. There is no merit in the appellants' specification of error that the court below failed to find that the evidence in the record before the Commission was insufficient to support the requirements of paragraphs 2, 3, and 5 of the order of the Commission. The evidence before the Commission dealt with practically every phase of the relation between the various classes of railroads in the interchange of freight cars and shows that under the rules and practices condemned by the Commission non-subscribers to the

Per Diem Code of the American Railway Association were treated differently from subscribers in the matter of car rental and in the matter of reclaim allowances, that short line railroads under 100 miles in length perform a terminal and assembling service, and are not equipped generally to report car hire accruals to the numerous car owners throughout the country and that certain short line railroads outside of switching districts which perform a terminal and assembling service have been required to assume a share of the car rental charges based on the Per Diem Code out of proportion to the character of service performed by them and to the revenues received. The evidence also shows that no demurrage charges are collected under the National Code of Demurrage Rules on coal cars placed at coal mines for the loading of coal, and that in these circumstances to require short lines to pay the per diem rental of $1 for every day of detention would impose upon such a railroad a burden of car hire expense entirely out of proportion to the length of haul, the revenue received by it, and the kind of service performed.

ARGUMENT.

1. The Commission Has the Power Under Section 1 (10-14) to Establish Reasonable Rules, Regulations and Compensation in Respect to the Distribution and Interchange of Freight Cars Among Railroads Subject to the Interstate Commerce Act.

That Congress has the authority to control the instrumentalities employed in interstate commerce is not open to question. *I. C. C. v. Illinois C. R. Co.,*

215 U. S. 452. Appellants concede the jurisdiction of the Commission over the subject matter. That Congress has delegated to the Commission the exclusive power to regulate the distribution and interchange of freight cars is settled. *United States v. New River Co.*, 265 U. S. 533; *Assigned Car cases*, 274 U. S. 564.

This Court will not weigh the evidence introduced before the Commission nor will it inquire into the soundness of the reasoning by which its conclusions are reached or question the wisdom of the regulations which it prescribes. *Western Paper Makers Chemical Co. v. U. S.*, 271 U. S. 268, 271; *I. C. C. v. Illinois C. R. Co.*, 215 U. S. 452, 471; *U S. v. New River Co.*, 265 U. S. 533. Such matters are left by Congress to the administrative tribunal "appointed by law and informed by experience". *Ill. C. R. Co. v. I. C. C.*, 206 U. S. 441, 454.

Paragraph 10 of section 1 of the Interstate Commerce Act defines the term "car service" to include "the use, control, supply, movement, distribution, exchange, interchange and return of locomotives, cars, and other vehicles used in the transportation of property".

Paragraph 11 of section 1 imposes upon every railroad subject to the Act the duty to furnish safe and adequate car service and to establish, observe and enforce just and reasonable rules, regulations and practices with respect to car service.

Paragraph 12 provides that it shall also "be the duty of every carrier by railroad to make just and reasonable distribution of cars for transportation of coal among the coal mines served by it, whether located upon its line of lines or customarily dependent upon it for car supply".

Under paragraph 13 the Commission may require the carriers to file their rules and regulations with respect to car service in tariffs.

Paragraph 14 of section 1 confers upon the Commission the power, after hearing with or without complaint, to "establish reasonable rules, regulations and practices with respect to car service by carriers by railroad subject to this act, including the compensation to be paid for the use of any locomotive, car or other vehicle not owned by the carrier using it, and the penalties or other sanctions for non-observance of such rules, regulations or practices."

An examination of these paragraphs of section 1 shows that the purpose of imposing these duties on the railroads and of conferring the powers upon the Commission was to bring about the establishment of just and reasonable rules, regulations and charges in respect to the interchange of cars among railroads subject to the act so that commerce would move unhampered.

The test of the validity of a regulation established by an order of the Commission under the power granted is that it be reasonable, appropriate and not inconsistent with the law. *U. S. v. Morehead*, 243 U. S. 607.

The authority of the Commission exercised in pursuance of this grant of power will not be narrowly construed, nor will the exercise of such powers be held to be void merely because it may seem unwise. *Utah Power & Light Co. v. U. S.*, 243 U. S. 389, 410.

The order of the Commission here under attack has for its purpose the establishment of just, reasonable and equitable rules and reasonable compensation to govern the interchange of cars between various

classes of railroads, under the varying conditions shown by the evidence.

The Per Diem Code of the American Railway Association provided that subscribers should be paid $1 per day rental for cars owned by them while used by both subscribers and non-subscriber railroads, but did not provide for the same payment to a non-subscriber for the use of its cars by a subscriber.

Paragraph 1 of the Commission's order requires that the same daily car rental shall be paid to non-subscriber railroads as is paid to subscribers under the Per Diem Code of the American Railway Association. (R. 99)

Paragraph 2 of the Commission's order requires that similar reclaim allowances shall be made to non-subscribers as to subscribers of the per diem rules agreement in connection with cars handled in terminal switching service. Under the rules condemned by the Commission a reclaim allowance was made to subscriber railroads which perform a terminal switching service but was not made to a non-subscriber railroad which performed the same character of service. The Commission's order requires equality of treatment in respect to reclaim allowances. The reclaim allowance is based upon the principle that a terminal switching carrier should be relieved of the per diem expense incurred while the car is in its possession (a) because it does not receive sufficient revenues to warrant the assumption of such an expense, and (b) because of the unavoidable delays incident to the character of service performed.

As to paragraph 2 appellants say that it gives the non-subscriber the right to terminal switching reclaim but that it does not require them to allow such

a reclaim to a subscriber. When the order of the Commission is examined in the light of the character of the proceeding, the basis of this contention entirely disappears, because the order operates directly on every railroad made respondent to the proceeding, which includes subscribers to the Per Diem agreement as well as non-subscribers. As non-subscribers are respondents, it is plain that the order requires them to make reclaim allowances to subscriber railroads.

The difference in the volume of traffic handled by a trunk line as compared with a short line might impair in some instances the reciprocal opportunities in respect to per diem reclaim, but that fact does not affect the validity of the order. Appellants contend that there is no provision in the law which requires them or any railroad to allow reclaims in per diem and that they are allowed by appellants and other subscribers to the per diem rules agreement by virtue of the terms of the agreement. This is but saying that the powers conferred upon the Commission by paragraph 14 of section 1 of the Act are not sufficient to enable it to prescribe just and reasonable regulations to govern the compensation and the interchange of cars among railroads subject to the Act. As to this we think it sufficient merely to refer to the fact that in the *New River case*, 265 U. S. 533, the Court held that the interstate commerce Act confers power on the Commission to regulate the distribution and interchange of cars and that its jurisdiction over the subject is exclusive.

The record shows that there has been an absence of uniformity in the rules and regulations governing car hire between trunk lines and short lines. In

some instances some trunk lines allowed certain short lines from one to four or five days, generally two days, free time before the short line was obliged to compute car rental at the current per diem rate. In most instances the trunk line connection of the short line required the short line to pay the per diem rate for each day that a car owned by the trunk line or other carrier was held by the short line.

The regulation established by paragraph 5 of the order applicable to short lines other than terminal switching lines is based upon the principle that as between certain car users a reasonable number of free days should be deducted by certain classes of short lines to take care of average detention before such lines compute car rental on the per diem basis. This does not mean that the short line is thereby relieved of paying a fair proportion of the car hire expense or that the owner of the car is deprived of reasonable compensation. It means simply that the Commission gave recognition to the fact that this class of short line performs an assembling and terminal service; that unavoidable delays are an incident of that service; and that the short line must allow two days free time to the shipper to load and to the consignee to unload a car under the demurrage code. The principle of this regulation has been applied by the appellants themselves and by other trunk line railroads in the so-called reclaim allowances to subscribers to the Per Diem Code which perform a terminal switching service. There is no substantial difference in the service performed by a stub end short line, contemplated by paragraph 5 of the order, and the service performed by a terminal switching carrier because each must put the cars in

fit condition for loading and must assemble and place them for loading or unloading as the case may be.

2. Under Its Power to Establish Reasonable Rules, Regulations and Charges in Respect to Car Service, the Commission May Establish Different Rules and Charges Applicable to Certain Classes of Railroads Based on Different Circumstances and Conditions.

The effect of the order of the Commission is to place common carrier railroads into three classes for the purpose of car hire settlements. One class is composed of railroads 100 miles or more in length. This class is required to make car hire settlements directly with car owners in accordance with the requirements of the Per Diem Code of the American Railway Association. The second class is composed of railroads less than 100 miles in length which interchange freight cars with one or more railroads subscribers to the Per Diem Code. This class of railroads usually handle what is called intermediate or overhead carload freight, that is, freight received from one carrier and delivered in the same car to another connecting carrier. This class is required to make car hire settlements directly with the car owner in accordance with the rules of the Per Diem Code. The third class are railroads less than 100 miles in length which have one or more interchange connections with other railroads and whose interchange business consists mainly (a) of the receipt of an empty car from a connecting line to be returned to the same line loaded, and (b) to the receipt of a loaded car from a connecting line to be unloaded

and returned empty or loaded to the same carrier. This is regarded as a terminal service incident to the interchange of the traffic. The order provides that railroads in this class shall make car hire settlements directly with the carriers with which they interchange the freight, and that in doing so they may deduct an average of two days free time per loaded car interchanged. If this class of carrier receives cars for return loading with coal from coal mines served by it which are customarily dependent upon the connecting lines for car supply, it shall not be required to pay car hire on such cars.

Section 1 (12) of the interstate commerce act provides that it shall be the duty of every carrier by railroad to make "just and reasonable distribution of cars for the transportation of coal among the coal mines served by it, whether located on its line or lines or customarily dependent upon it for car supply * * *." This paragraph was considered by the Court in *United States v. New River Co.*, 265 U. S. 533, and in the *Assigned Car cases*, 274 U. S. 564. The placement of cars at coal mines is governed by car distribution rules and not by the demurrage rules which apply to carload freight other than coal. The mine ratings and coal car distribution rules generally in effect have been tentatively approved by the Commission in *Rules Governing Ratings of Coal Mines*, 95 I. C. C. 309. These rules permit mines, during periods when there is a surplus of coal cars to hold the cars on mine tracks indefinitely without being required to pay demurrage or other penalties.

Trunk lines, the appellants, among others, aided in formulating the coal car distribution rules now in effect and in obtaining the approval thereof by the

Commission. In *Demurrage on Coal and Coke,* 102 I. C. C. 554, the Commission found that since car distribution rules are in effect at coal mines, the railroad may not assess demurrage for any part of the detention against the coal mines. Under Rule 6 of the Per Diem Code short lines would be required to pay $1 per day to the owner of the car or to the connecting carrier for each day the coal cars are held at coal mines though prohibited from collecting demurrage from the mines for such detention. In some instances a short line has stored coal cars for its trunk line connection. (R. 255) This imposed on the short line an unreasonable car hire expense.

Paragraph 3 of the Commission's order requires that a short line railroad less than 100 miles in length which returns railroad owned equipment to the road from which received shall not be required to report car hire accruals to the numerous car owners throughout the country, but shall be attached to its connecting carrier for purposes of car hire settlement. The record shows that trunk lines such as the appellants are equipped with car accounting departments which are able to account for car hire settlements for the interchange of cars between themselves and short line carriers contemplated by paragraph 3 of the order, with little or no additional expense, and that very little car accounting is required of a short line when it makes settlement directly with its connection. On the other hand the record shows that to require a short line, contemplated by paragraph 3 of the order, to make car hire settlements directly with the numerous car owners throughout the country, unnecessarily and unduly increases the expense of performing that work. The total annual expense for this work by short lines would be about

$500,000.00 (R. 825). The Commission's order covering this subject is based upon the facts of record and the principle that as the trunk line is equipped to do this work with practically no additional expense, it is reasonable and in the public interest as well as in the interest of the railroads themselves that short lines of this class be relieved of the expense.

Briefly summarized, the order of the Commission requires trunk lines to adopt uniform practices in making car hire settlements with short terminal railroads of the class described in paragraph 3 thereof. It requires trunk lines to discontinue the practice in effect for many years whereby they, contrary to their own rules, made exceptions thereo as to some short lines and refused to do so as to others. Paragraph 5 of the order, which must be read in connection with paragraph 3, provides that the class of railroads contemplated by paragraph 3 shall pay car hire to connecting railroads on railroad-owned freight cars after deducting an average of 2 days free time per loaded freight car interchanged and that settlements should be made at the end of each calendar month. The service performed by this class of carriers consists generally of receiving an empty car from a connecting line and returning that car with a load or of receiving a loaded car from a connecting line and returning the car to that line loaded or empty. This class of carrier performs a service substantially the same as the service performed by terminal switching railroads within switching districts. Under the reclaim allowances of the Per Diem Code, a switching carrier is allowed to reclaim on the average about $5 per car of the car hire paid, and is allowed to retain all the demurrage charges collected by it. Such

switching carriers and the short lines contemplated by paragraphs 3 and 5 of the order each interchange freight cars with a connecting carrier, and each must allow the shipper two days free time to load a car and two days free time to unload under the demurrage code. It is the duty of carriers in this class to see to it that cars placed for outbound shipments are in fit condition to carry the lading and that the cars are properly loaded.

The South Manchester may be used to illustrate short line carriers in this class. The South Manchester has two miles of main line track between South Manchester and Manchester, Conn. It has an interchange connection with the New York, New Haven and Hartford at Manchester. The average detention of cars on its line at the time of the hearing was about 2.15 days. (R. 970) Under the rule prescribed by the Commission, the South Manchester will be allowed to deduct an average of two days free time per loaded freight car interchanged before making car hire settlements with the New Haven on a per diem basis. Under the rules condemned by the Commission, the South Manchester would be obliged to pay $1 per car for each day a car is on its rails, even though most of the detention or all of it occurred as an incident to the placement of the car at the plant of the shipper for loading or unloading. If the New Haven placed a car at the plant of a shipper on its own rails at Manchester, it would be obliged to allow two days free time for loading or for unloading as the case may be. But under the rules condemned by the Commission, if the New Haven switched the car to the South Manchester for a load, the South Manchester would be obliged to pay the New Haven or the car owner $1 for each day

the car was detained for loading or unloading. The rules prescribed by the Commission simply recognize the principle that as between the various users of cars it is unreasonable to require a terminal short line to pay car hire on the straight per diem basis. The per diem method of adjusting car hire settlements is but a convenient way of computing compensation. It does not follow that a car owner is deprived of reasonable compensation for average car ownership because as between the various users of the car the Commission requires that a certain class of carrier on account of the service performed and other circumstances, an average of two days should be deducted before that carrier is obliged to compute the car hire rental due from it at the per diem rate.

The principal question which the Commission had to determine was what would constitute reasonable compensation from the various railroads using a car in transporting interline freight. The investment in freight cars in use in this country varies substantially according to the size and character of the car. The circumstance of certain of the railroads which would participate in the transportation of say, a shipment from Seattle to a point on a small railroad in Pennsylvania would relieve them of all car hire expense under the Per Diem Code. Where, for instance, a carrier receives a car from a connection after midnight and delivers the car the same day to a connection before midnight, it is not required to pay per diem on that car during that period. The Elgin, Joliet & Eastern, which serves as a connecting link between eastern and western railroads handles a great volume of carload business in this manner as

does the Richmond, Fredericksburg & Potomas Railroad. The short line railroads embraced within paragraphs 3 and 5 of the Commission's order do not perform an intermediate service and are not in position by virtue of that fact to escape or minimize the car hire expense as are intermediate carriers. These and other considerations caused the Commission to prescribe a rule that gives recognition to a principle already ingrained in the per diem code, which is that while the car owner is entitled to reasonable compensation for its car from the railroad which uses it, the car owner is not deprived of reasonable compensation because it may not receive compensation at the per diem rate from every carrier on every car for every day the car is out of its possession.

Appellants enthusiasm for the virtue of per diem as a method of computing compensation has caused them to lose sight of the more fundamental question considered by the Commission, namely that the car owner is only entitled to reasonable compensation for the use of its cars by other carriers and that it obtains reasonable compensation under the regulation prescribed by the Commission even though at the end of the year it may turn out that the car owner did not receive compensation equivalent to $1 per day for each day that each car was used by other carriers. As heretofore stated, the per diem rate of $1 was approved by the Commission as representing reasonable compensation for average car ownership. A particular carrier cannot complain because as to its cars it may not receive during a given period compensation at $1 for each car for each day the car is off its line.

Appellants contend that the classification of rail-

roads made by the Commission is arbitrary and unreasonable and is not supported by any evidence in the record. This contention is unfounded. The classification of the Commission is not unreasonable or arbitrary because it makes a distinction between railroads less than 100 miles in length and railroads more than 100 miles in length. The Commission and this Court have frequently approved such a distinction. In the *Railway Mail Pay cases*, 56 I. C. C. 1; 144 I. C. C. 675; and 165 I. C. C. 774, the Commission fixed different compensation for separately operated railroads not exceeding 100 miles in length and not less than 50 miles in length from the compensation fixed for railroads exceeding 100 miles in length and for railroads less than 50 miles in length.

In *St. L. I. M. & S. Rwy. Co. v. Arkansas*, 240 U. S. 518, the Court dealt with a statute which forbade railroads from conducting switching operations across public streets in first and second class cities, with a crew of less than 1 engineer, 1 foreman, 1 fireman and 3 helpers, with an exemption in favor of railroads less than 100 miles in length. It was there contended that this exemption was unreasonable, unlawful and arbitrary. In answering that contention the Court cited *C. R. I. & P. v. Arkansas*, 219 U. S. 453, where a statute exempting railroads less than 50 miles in length was before it, and said:

> "The distinction seems arbitrary if we regard only its letter but there may have been considerations which determined it and the record does not show the contrary. 'We have recognized the impossibility of legislation being all comprehensive and that there may be particular groupings of objects which will as a whole fairly present a

> class of itself although there may be exceptions in which the evil aimed at is deemed not so flagrant. *Armour & Co. v. N. Dakota,* 240 U. S. 510; *Miller v. Wilson,* 236 U. S. 373."

See also *N. Y. N. H. & H. R. Co. v. New York,* 165 U. S. 628, and *Chesa. & Ohio Ry. Co. v. Conley,* 230 U. S. 513, 523.

In *Wilson v. New,* 243 U. S. 332, the Supreme Court sustained the Adamson Act. That Act exempted from its provisions certain carriers not exceeding 100 miles in length, as well as electric street and interurban railroads. In answer to the contention that this exemption was unreasonable and arbitrary, the Court said, at page 354:

> "The want of equality is based upon two considerations. The one is the exemption of certain short line and electric railroads. We dismiss it because it has been adversely disposed of by many previous decisions."

These and other decisions support the view that the classification made by the Commission in this proceeding is not without precedent. Appellants contend that these decisions are not applicable because here there is no question of public safety nor of public interest. The right of the Commission to classify, in the exercise of its power to prescribe just and reasonable rules and regulations to govern the distribution of cars and to fix compensation does not depend on the question whether the public safety or direct public interest is involved. Such a classification is but an incident to the exercise of the power granted. While at first blush the lan-

guage chosen by the Commission giving effect to paragraphs 3 and 5 of its order may appear involved and arbitrary, it will be found upon analysis that these paragraphs actually set up rules and regulations to govern the interchange of cars with the compensation to be paid, by a class of short line railroads which perform an assembling and terminal service and which, on that account, must in fairness be treated differently in car hire settlements from trunk lines or carriers performing intermediate and other services.

Car hire settlements between trunk lines under the Per Diem Code of rules are based in part upon the principle of reciprocity, and settlements between such railroads are made on balances. Some roads at the end of the settling period will have credit balances, while others will have debit balances. A trunk line may lose in car hire accruals at one point, and gain in car hire credits at another point. The record shows that if 429 short lines, members of the American Short Line Railroad Association, should own the same proportion of freight cars per mile of road as are owned by trunk lines, they would own 11 cars per mile of road, which would make it necessary for them to purchase 114,000 additional freight cars, and that if other short lines who are not members of the short line association should do likewise, it would require the purchase of 150,000 additional freight cars. At the per diem rate of $1, this would add $55,000,000 to the cost of car ownership per year on which the public would have to pay a fair return. (R. 810)

As there has been a great surplus of cars in recent years, due to the increased speed in handling and

the increase in the average load per car, it is of course obvious that it would be contrary to the interest of the railroads themselves and to the public for short line railroads to acquire additional equipment. There are more than enough cars in the country today to handle the commerce. These facts were considered by the Commission. If these short lines should acquire 150,000 additional cars, the interchange of these cars with the trunk lines might enable them to adjust car hire settlements on the same reciprocal basis as car hire settlements are now adjusted between trunk lines. But an acquisition of additional equipment under the facts shown of record for the sole purpose of enabling carriers of a certain class to accrue larger per diem credits would be without any justification from the standpoint of the public interest and the best interest of the railroads.

3. There Is No Merit in Appellants' Contention that the Order of the Commission is Void Upon the Ground that it Takes Their Property Without Due Process of Law.

A large part of appellants' brief is devoted to the task of attempting to support the contention that the order of the Commission is void upon the ground that it operates to confiscate their property and to deprive them of the property without compensation and without due process of law. A similar contention was made by certain parties in the *Assigned Car cases,* 274 U. S. 564, which was briefly disposed of by the Court as having no merit. The contention here is equally lacking in merit. Where private property is devoted to public use, it is fairly well settled that

it must yield obedience to an order made by a tribunal such as the Commission in the legitimate exercise of its power. There can be no question here that the Commission has the power to make rules and to fix the compensation to govern the interchange of cars. The only question entitled to any consideration is whether the order entered in this case is an abuse of the power conferred upon the Commission. The fact that appellants may suffer some injury incident to the exercise of the power of the Commission to regulate the interchange of cars does not constitute a taking of property within the constitutional prohibition against the taking of property without due process of law; or the taking of property for public use without compensation. *C. B. & Q. R. R. Co. v. Illinois,* 200 U. S. 561; *Mugler v. Kansas,* 123 U. S. 623; *N. Y. & N. E. R. Co. v. Bristol,* 151 U. S. 556; *Gibson v. United States,* 166 U. S. 269; *Scranton v. Wheeler,* 179 U. S. 141; and the *Legal Tender cases,* 12 Wall. 550.

The cases cited by appellants do not support the contentions made. Appellants contention is based upon the premise that the order of the Commission constitutes the unlawful taking of property because (a) it requires as between various car users that certain classes may deduct an average of two days free time per loaded freight car interchanged before computing car hire on the per diem basis, (b) this class of carrier is required to report car hire settlements to its connections rather than to the numerous car owners throughout the country, and (c) the order requires that non-subscribers and subscribers to the Per Diem Code be treated alike in respect to reclaim allowances. These characteristics of the regulation

of the Commission do not constitute the taking of property without compensation and without due process of law as contended by appellants. The injury, if any, resulting from the regulation is but an incident to the establishment by the Commission of just and reasonable regulations to govern the complex question of car hire interchange.

Similar contentions were made and rejected by this Court in the *New England Divisions case*, 261 U. S. 184. The argument was there made that the division of the joint rate required by the Commission was essentially a partition of property and that the apportionment made is a taking of property without due process of law. In answer to this the Court said:

> "But the argument begs the question. What is its just share? It is the amount properly apportioned out of the joint rate. That amount is to be determined, not by an agreement of the parties or by mileage. It is to be fixed by the Commission; fixed at what that board finds to be just, reasonable, and equitable. Cost of the service is one of the elements in rate making. It may be just to give the prosperous carrier a smaller proportion of the increased rate than of the original rate. Whether the rate is reasonable may depend largely upon the disposition which is to be made of the revenues derived therefrom."

Likewise it may here be said that appellants' contention that the order of the Commission takes their property without just compensation and without due process of law begs the question, the question being what constitutes just compensation as between the

car owner and the car user, and as between the various car users? That question under the law must be determined by the Commission, as it has exclusive jurisdiction over the subject matter. The Commission has determined upon the record, composed of nearly 5,000 pages of testimony, that reasonable compensation as between railroads less than 100 miles in length and which return cars to the carrier from which received and railroads of more than 100 miles in length will result to the owner of the car by allowing the short line to deduct an average of two days free time per loaded freight car interchanged in the settlement of car hire with the connecting line.

In *Michigan C. R. Co. v. Michigan R. R. Commission,* 236 U. S. 615, in dealing with the contention that at common law the carrier was not bound to carry property except on its own line and might not have been required to permit its equipment to be hauled off of its line, the Court said:

> "But in this, as in other respects, the common law is subject to change by legislation; and, so long as the reasonable bounds of regulation in the public interest are not thereby transcended, the carrier's property cannot be deemed to be 'taken' in the constitutional sense. Minneapolis & St. L. R. Co. v. Minnesota, 193 U. S. 53, 63, 48 L. ed. 614, 618, 24 Sup. Ct. Rep. 396; Atlantic Coast Line R. Co. v. North Carolina Corp. Commission, 206 U. S. 1, 19, 51 L. ed. 933, 941, 27 Sup. Ct. Rep. 585, 11 Ann. Cas. 398; Grand Trunk R. Co. v. Michigan R. Commission, 231 U. S. 457, 470, 58 L. ed. 310, 318, 34 Sup. Ct. Rep. 152; Wisconsin M. & P. R. Co. v. Jacobson and Chicago, M. & St. P. R. Co., v. Iowa, *supra.*"

In the *Michigan case* the Court reaffirmed a principle long recognized that the property of a railroad, such as cars, though acquired through the expenditure of private capital, are nevertheless subject to reasonable regulation because devoted to a public use, and that the requirement of the tribunal acting for the legislative body that cars be freely interchanged between different railroads is not such an exercise of power as to constitute the taking of property as that term is used in the Constitution.

Unless in this case the Commission abused the power conferred upon it by Congress, or unless it exercised that power in an unreasonable or arbitrary manner, its order is valid. It is also clear that the circumstance that its order may in some instances cause some injury to appellants as an incident to the exercise of the power will not constitute the taking of property in contravention of the Fifth Amendment. The order is a legitimate exercise of the power conferred upon the Commission to determine and prescribe reasonable rules and regulations to govern the interchange of cars and reasonable compensation to the car owners under the various conditions under which cars are used by the different classes of railroads. The fallacy of appellants' contention proceeds from their major premise, which is that unless the car owner receives $1 from each and every user for each and every day its car is out of its possession, it will be deprived of reasonable compensation. We submit that reasonable compensation for the use of a car may be something short of a straight per diem charge and at all events that this is a question within the power of the Commission to determine, and once

it determines the question upon evidence, its conclusion is final and not reviewable by the courts.

4. There Is No Merit in Appellants' Contention that the Evidence of Record Before the Commission was Insufficient to Support Paragraphs 2, 3 and 5 of Its Order, and that the Court Below Erred in Failing So to Find.

Appellants contend that the order of the Commission is void because each paragraph thereof creates a classification of railroads and that the classification created by each is different from that created by every other paragraph and that the order of the Commission is not supported by evidence.

Under another chapter we have already pointed out that this Court and other courts have recognized the validity of laws and of regulations which apply differently to different classes of railroads. The record before the Commission consists of 4800 pages of transcript and 540 exhibits. It deals with practically every phase of the relation between railroads in respect to the interchange and compensation for the use of cars. It contains a history of car hire or per diem settlements in effect for the past 40 years. It shows that many years ago interchange arrangements between carriers were based largely on the understanding that car interchange between carriers would be equalized, that is carrier A would return to carrier B as many cars as it received from carrier B and that at that time the question of compensation by the user of the car to the car owner was not emphasized. The first plan of compensation was based on the number of miles the car traveled per day.

Later a per diem charge of 20 cents was established. Since about 1903 the per diem rate has been increased progressively from 20 cents per car day to the present rate of $1 per car day.

The record shows the financial and other conditions of about 141 short lines which are fairly typical of the short line railroads in this country. It shows that the division of revenue received by short lines out of joint rates with trunk lines has not been fixed generally with car hire expense in mind and that if this class of short lines were required to pay the per diem rate of $1 for each and every day a car is in their possession it would add greatly to the expense of operation without contributing anything to increased efficiency in the use of cars. The American Railway Association has insisted on treating non-subscribers to the Per Diem Code on a different basis from subscribers to that code. The Commission has condemned this classification and has substituted therefor a classification based upon circumstances and conditions and the character of service performed by different railroads. This is but the substitution of a rule of reason for an arbitrary rule based on the question whether a railroad was a subscriber or a non-subscriber to the per diem rules agreement.

As to paragraph 3 of the Commission's order which provides that railroads less than 100 miles in length with only one railroad interchange connection may be relieved of reporting car hire settlements with the numerous car owners in the country, the testimony of witness Cass before the Commission showed that the cost of reporting car hire settlements by this class of railroads would amount to about $500,000 per year. This part of the Commission's order is based upon

two important considerations: (a) that trunk line connections of short lines are equipped with large accounting forces to do this work and are now doing the work and have always done it, and (b) that to impose this task of reporting car hire settlements on this class of short lines would add an additional expense to the traffic of the country not justified by the circumstances and which would be contrary to the best interest of the railroads and the public.

The contention by appellants that paragraphs 2, 3 and 5 of the order of the Commission are not supported by evidence is puerile. The appellants, as well as all other respondents in the United States, availed themselves of the opportunity to introduce evidence before the Commission. Hearings were held at various points throughout the United States. These appellants were represented at these hearings by counsel for the American Railway Association, of which they are members. Counsel was given an opportunity to examine and cross-examine witnesses and to object to any evidence that was irrelevant and immaterial and to put in evidence that was material and relevant.

At page 47 of their brief appellants say:

> "We do not contend that the order here under attack was made without a hearing. Numerous hearings were held and a *complete record was made.*"

It is hard to conceive how, in the face of this concession, counsel for appellants can seriously contend that although a complete record was made there is not sufficient evidence in the record to support the order of the Commission. After making this concession on page 47, appellants say:

> "We do contend that paragraphs 2, 3 and 5 of the Commission's order exceed the constitutional limits within which the Commission must function in that they operate to confiscate appellants' property and require its taking without compensation to them and without due process of law; that the evidence before the Commission does not support the conclusions reached in these paragraphs, and that they are arbitrary, unreasonable, not supported by the evidence and amount to an abuse of power."

These are simply formal contentions which this Court will not seriously consider unless they are shown to be based on substance. As the Court knows, contentions of this kind are made in practically every case where an order of the Commission is attacked. If, as appellants concede, the record before the Commission was complete, it is inconsistent for appellants to say at the same time that the evidence in that record is insufficient. By this contention appellants say in effect that the judgment of the Commission was bad and that it gave too much weight to certain evidence and not enough to other evidence. This Court will not substitute its judgment for that of the Commission nor will it weigh the evidence. This Court has said that "a tribunal such as the Interstate Commerce Commission, expert in matters of rate regulation, may be presumed to be able to draw inferences that are not obvious to others". *O'Keefe v. I. C. C.*, 240 U. S. 294.

The fact that the order of the Commission applies to all common carriers by railroad subject to its jurisdiction and is universal in its application is, of course, not a reason to challenge its validity. As this Court held in the *Assigned Car cases*, section 1

(14) of the Interstate Commerce Act includes the power to prescribe a rule of universal application.

CONCLUSION.

The order of the Commission here under attack is based upon evidence adduced in the most comprehensive investigation ever conducted by the Commission concerning the rules, regulations and practices governing the interchange of freight cars between railroads subject to the Act and the compensation paid by the user to the owner of such cars. The problem is difficult and complex. Numerous complaints had been filed with the Commission by certain classes of railroads alleging that the car hire rules of the American Railway Association applied by trunk lines were unjust and unreasonable as applied to the interchange of cars between trunk lines and short lines. And in general there had been much dissatisfaction concerning the efficacy and reasonableness of these rules and regulations. With this background, in January, 1926, the Commission instituted a nation-wide investigation with the object in view of exercising the power conferred upon it by section 1 (14) of the Interstate Commerce Act which authorizes it to prescribe just and reasonable rules and regulations and to fix compensation.

It is no exaggeration to say that every phase of car hire problems was presented to the Commission by men who had devoted a large part of their lives to the work. As appellants concede, numerous hearings were held at various places throughout the country and a "complete record" was made. There is no merit in appellants' contention that the order of the Commission is not supported by substantial evidence.

The determination of what consitutes a reasonable rate, rule or regulation for the future is a legislative or administrative function. *Great Northern Rwy. Co. v. Merchants Elevator Co.*, 259 U. S. 285. The administrative orders of this character when supported by evidence are conclusive. *Central R. R. Co. v. United States*, 257 U. S. 247, 256. The fact that the universal character of the regulation prescribed by the Commission may cause incidental injury to certain carriers is not a reason for finding the regulation invalid. *Assigned Car cases*, 274 U. S. 564.

As we have already pointed out, appellants concede, as they must, that the Commission has jurisdiction over the subject-matter. They concede that a complete record was made. As between certain classes of car users the Commission determined that the car owner would be reasonably compensated under the per diem method of computing compensation by permitting certain short line railroads to take two days as time out before compensation at the per diem basis should commence. The essence of appellants' position is that in prescribing such a regulation and in determining compensation on this basis the Commission acted in an unreasonable manner. This begs the question because, if the Commission had the power to make the order and if, as we contend, it was supported by evidence, the Court will not review the question whether the judgment of the Commission was wise, expedient or reasonable. The Commission's judgment on that question is final.

As the Commission had authority over the subject matter dealt with by the order under attack and as the order is supported by substantial evidence its

order and the findings of fact and conclusions of law of the court below should be sustained.

Respectfully submitted,

ROBERT E. QUIRK,
Solicitor for Appellee,
South Manchester Railroad Co.

October 5, 1931.

CORRECTED COPY

SUPREME COURT OF THE UNITED STATES.

No. 69.—October Term, 1931.

The Chicago, Rock Island and Pacific Railway Company, Chicago and North Western Railway Company, Illinois Central Railroad Company, et al., Appellants,
vs.
The United States of America, Interstate Commerce Commission, et al.

Appeal from the District Court of the United States for the Northern District of Illinois.

[November 23, 1931.]

Mr. Justice Sutherland delivered the opinion of the Court.

This suit was brought in the federal district court for the northern district of Illinois to set aside parts of an order of the Interstate Commerce Commission made in a proceeding instituted by that body on its own motion. The purpose of the proceeding was to investigate "the rules for car-hire settlement between common carriers by railroad in the United States for the use and detention of freight cars while on the lines of carriers other than their owners, with a view to making such order or orders in the premises as may be warranted by the record." All common carriers by railroad in the United States were made parties respondent. The Commission reopened and consolidated with the proceeding a number of cases theretofore pending before it, some of which had already been heard and decided. Elaborate hearings were had, at which, generally, the trunk line railroads were represented by the American Railway Association, and the short lines, by the American Short Line Railroad Association. A large amount of testimony was submitted, together with several hundred exhibits. The Commission filed two reports. The first will be found in 160 I. C. C. 369-448, and the second or supplemental report in 165 I. C. C. 425.

The original report discussed the case and concluded with nine specific findings, the first of which follows:

"1. Common-carrier railroads, whether subscribers to the per diem agreement of the American Railway Association or nonsubscribers, are entitled to receive reasonable compensation in the form of a daily rental for the use of their general-service freight cars when on foreign lines, and that the present per diem charge of $1 per car day reasonably compensates car owners for average car ownership and maintenance costs. The reasonableness of this per diem rate is not questioned."

No order was then made, but the carriers affected were expected to conform to the findings and were left to modify their rules and practices accordingly. The carriers having failed and refused to do so, the Commission issued its supplemental report and entered an order giving effect to its findings, by which order the respondents in the proceedings before the Commission were required, on or before October 1, 1930, to cease and desist, and thereafter to abstain, from applying rules for car-hire settlements in conflict with those prescribed by the Commission's order, and were required to establish, on or before that date, and thereafter to maintain and observe, rules with respect to car-hire settlements which shall provide:

"(1) That the same daily car rental shall be paid to common-carrier nonsubscribers as respondents contemporaneously pay to subscribers to the per diem rules agreement of the American Railway Association, for the use of general-service freight cars.

"(2) That similar reclaim allowances shall be made to nonsubscribers as to subscribers of the per diem rules agreement, in connection with cars handled in terminal switching service, as the latter term is defined by the switching reclaim rules of the American Railway Association.

"(3) That short-line railroads which are less than 100 miles in length, and which return railroad-owned equipment to the road from which received, shall not be required to report per diem accruals to numerous car owners throughout the country, but shall be attached to their connecting carriers for purpose of car-hire settlement.

"(4) That common-carrier railroads which interchange freight cars with more than one subscriber railroad, and which deliver to one or more subscribing carriers, freight cars which are received from another such carrier, and railroads 100 miles or more in length, regardless of the number of railroads with which they connect, shall make car-hire settlements direct with car owners in accordance with the per diem rules.

"(5) That common-carrier railroads outside switching districts, other than those referred to in paragraph 4 hereof, shall

pay per diem to connecting carriers on railroad-owned freight cars after deducting an average of two days free time per loaded freight car interchanged, settlements to be made at the end of each calendar month, except that no car hire need be paid on cars received for return loading with coal from coal mines which are customarily dependent upon connecting carriers for car supply."

Thereupon, appellants, on behalf of themselves and other carriers similarly situated, brought this suit to set aside paragraphs (2), (3) and (5) of the order. No complaint was made in respect of paragraphs (1) and (4). The case was heard by a court of three judges, constituted as required by the Urgent Deficiencies Act of October 22, 1913, 38 Stat. 220, U. S. C., Title 28, § 47. That court, without an opinion, made findings and conclusions sustaining the order of the Commission in all respects, and entered a decree of dismissal without prejudice to further applications to the Commission for modification of the order, if, subsequently, injury or unfair results follow from the application of the order.

In the early history of railroad operation, through freight was transferred from the cars of one road to those of the connecting line at junction points. This resulted in waste of time and money, and the railroads themselves soon adopted the practice of permitting the loaded cars to pass from their own tracks to those of the connecting roads, making a charge therefor. See *In the Matter of Car Shortage, etc.*, 12 I. C. C. 561, 573. For many years charges for interchanged cars were on a mileage basis, but this was found impracticable, and a per diem rate generally was substituted. Finally, an agreement was entered into, known as the "Car Service and Per Diem Agreement," which provided for an interchange of cars subject to a code of rules adopted by the American Railway Association, the general principle of which was that payment should be made to the car-owning railroad for each day the car was off its lines. The railroads subscribing to this agreement are known as "subscribers," and other roads, as "nonsubscribers." The subscribers, all members of the American Railway Association, comprise nearly 78 per cent. of the steam railroads in the United States; and these operate nearly 98 per cent. of the entire railroad mileage, and own 99.81 per cent. of all the railroad common carrier car equipment of the country. Carriers operating less than 100 miles of railroad are eligible for associate membership but without voting rights. At the time this case was heard by the

Commission, the per diem rate was fixed at $1.00 per car. The rules required daily interchange reports in respect of all cars interchanged between subscribers. Generally, nonsubscribers were railroads operating short lines and owning little or, in some cases, no freight car equipment. Provision was made in the rules for a "reclaim allowance," that is to say, a refund, to railroads which had paid car rental, to the extent of the per diem expense incurred in handling cars in terminal switching service. This rule was confined to subscribers, and no reclaim allowance was permitted to nonsubscribers for such service.

That the order of the Commission falls within the scope of its statutory powers is clear. Interstate Commerce Act, as amended by Transportation Act, 1920, c. 91, § 402, 41 Stat. 456, 476; U. S. C., Title 49, § 1 (10)-(14). Subdivision (14) provides:

"The Commission may, after hearing, on a complaint or upon its own initiative without complaint, establish reasonable rules, regulations, and practices with respect to car service by carriers by railroad subject to this Act, including the compensation to be paid for the use of any locomotive, car, or other vehicle not owned by the carrier using it, and the penalties or other sanctions for nonobservance of such rules, regulations or practices."

The authority of the Commission to institute the proceeding on its own motion, and to prescribe reasonable rules relating to the subject of car service, and to prescribe reasonable compensation for the use of the cars of one railroad by another railroad, is conceded. Nor is it disputed that under the law, in the operation of through routes, common carriers subject to the Interstate Commerce Act may be obliged to permit their car equipment to be carried beyond their own lines. See *Missouri & Illinois Coal Co.* v. *I. C. R. R. Co.*, 22 I. C. C. 39. Appellants assail paragraphs (2), (3), and (5) of the order on the grounds that their provisions operate to take property without compensation, are not justified by the evidence, and are discriminatory, unequal, arbitrary, and unreasonable.

First—Paragraph (2). Paragraph (1) of the order, which is not challenged, requires the same daily car rental to be paid to nonsubscribers as is paid to subscribers to the per diem rules agreement. Of this, paragraph (2) is the logical corollary. If nonsubscribers are entitled to be put on terms of equality with subscribers in the matter of liability for car rental payments, it

is hard to see why they should not also be entitled to the same equality in respect of refunds of such portions of the payments as represent switching charges, provided, of course, that the nonsubscribers are also required to assume like obligation in respect of reclaim allowances when they in turn are owners of the used cars. The two paragraphs, taken together and fairly interpreted, we think justify the conclusion that the obligations imposed and the benefits to be received are intended to be reciprocal, and put subscribers and nonsubscribers, in respect thereof, upon terms of equality. That this is the view of the Government and of the Commission appears from the language of their brief, as follows:

"The Commission's obvious purpose was to place nonsubscribers on an equal footing with subscribers. The order is directed against all the common-carrier railroads in the United States, including both subscribers and nonsubscribers. The requirement that 'similar reclaim allowances shall be made to nonsubscribers as to subscribers' can only mean that nonsubscribers and subscribers are to be treated alike. . . . The order in any event does not prevent appellants and the other subscribers from modifying the per diem rules so as to require nonsubscribers to pay such allowances to the subscribers. Since appellants can themselves cure the defect which they allege in the Commission's order, they are not in a position to challenge the order on this ground."

This virtually amounts to a construction by the Commission of its own order in accordance with the view we have expressed. The suggestion that in so far as the short line railroads can bring themselves within paragraph (5) of the order, this equality of treatment will fail, will be found to disappear when we come to deal with that paragraph.

Second—Paragraph (3). This paragraph relieves the short line railroads of the class defined—i. e., those returning cars of other carriers to the road from which received, from the burden of reporting per diem accruals to numerous car owners, and in effect requires such reports to be made only to their immediate connecting carriers. The objection urged to the paragraph is that it requires the connecting carrier to expend its money in keeping accounts and making reports and payments in respect of operating expenses of the short line carrier, and thus amounts to confiscation in the guise of regulation.

The classification which results in exempting railroads less than 100 miles in length from the necessity of making reports of per

diem accruals separately to each of the numerous car owners throughout the country is attacked as arbitrary and unreasonable. We think it is neither. It is of a kind frequently made and frequently upheld by this court. *St. L. & Iron Mtn. Ry.* v. *Arkansas*, 240 U. S. 518, 520; *Wilson* v. *New*, 243 U. S. 332, 354, and authorities cited. Moreover, the car equipment of the country is substantially in the hands of the trunk lines, that owned by the short lines being almost a negligible proportion of the whole. And this fact affords some additional ground for the classification. Indeed, the classification was recognized as legitimate by appellants themselves, when they subscribed to the provision that such short lines should be permitted to become associate members only of the American Railway Association, but without voting rights.

Under the per diem agreement subscribers must report to each car owner as to cars used, and pay the per diem charges to such owner; but in the case of nonsubscribers—who are not bound by the rules—the reports and payments are made to the immediate connecting subscriber carrier. The effect of paragraph (3) is to extend this privilege to the subscribing short line carriers as well. In other words, all short line railroads, whether subscribers or not, are put in a separate class and relieved from the burden of keeping account of a multitude of separate per diem charges, and reporting them separately to the various trunk lines.

Each of the trunk lines already maintains a large accounting force, and is obliged to keep account of cars received from other lines, including those turned over to, and returned by, its connecting short lines. It fairly may be said that it will entail relatively little additional service to keep the accounts and make the reports, as required by paragraph (3). Each of these trunk lines in turn will be relieved from much of the burden and expense of dealing directly with non-connecting short lines; and it is not improbable that the benefits received will counterbalance the burdens, or at least go very far in that direction. On the whole, we are unable to conclude that this part of the order imposes upon the connecting lines anything of substance that as a matter of law constitutes a part of the work of operating the short lines, or that the required change adds anything to the operating expenses of such connecting carriers. On the other hand, as the record clearly shows, the keeping of these additional accounts,

and the making of the vast number of reports to the numerous car owners throughout the country which would be required in the absence of paragraph (3), would put upon these short lines an excessive and disproportionate burden. It was estimated by one witness, and not contradicted, that if the short lines were required to keep their accounts as they are kept by the trunk lines, it would impose an unnecessary burden upon the traffic of the country of approximately $500,000 per month.

The power to "establish reasonable rules, regulations, and practices with respect to car service by carriers by railroad", conferred by subdivision (14) of section 1, hereinbefore quoted, undoubtedly includes the power to make reasonable rules prescribing forms and methods of accounting, reporting and distributing payments in respect of such service. The Commission is here dealing with the railroad system of the country as a whole. A multitude of interrelated interests is concerned. The trunk lines, as owners, furnish in the main all the car equipment used by the short lines. These are legitimate facts to be considered by the Commission in exercising its authority in respect of accounts; and these facts, and other facts and circumstances, justly may require that more of the clerical work shall be done by one of these classes than by the other.

The Commission is a body of trained and experienced experts, and in respect of such matters a reasonable degree of latitude must be allowed for the exercise of its judgment. The mere fact that, in application, mathematical accuracy in the adjustment of the burden may not be attained is not enough to put upon the Commission's order the stamp of invalidity. Primarily, the question is an administrative one, and unless the limits of reasonable regulation be transcended, the courts may not interfere. The Commission concluded that the circumstances afforded warrant for requiring that class of railroads which generally owned the cars, which was best equipped to perform the clerical work, and which would receive the most in the way of compensating and offsetting benefits, to perform a larger proportion of the service of keeping and rendering the accounts. In doing so, we are of opinion that it did not transcend the limits of reasonable regulation, and that the claim of confiscation is not sustained.

Third—Paragraph (5). This paragraph stands upon a different footing from those just considered. We do not find it necessary to review the various arguments made for and against the power of the Commission to make this part of the order. Section 1 (14), *supra,* authorizes the Commission to fix the compensation to be paid for the use of cars, etc., not owned by the carrier using them. This the Commission undertook to do, and expressly found that, whether subscribers or not, all common carrier railroads were "entitled to receive reasonable compensation in the form of a daily rental for the use of their general-service freight cars when on foreign lines, and that the present per diem charge of $1 per car day" was such reasonable compensation. In so doing it followed the direction of the statute. It then proceeded, however, by an order to grant to the short line railroads two days free time for interchanged loaded cars, and denied compensation altogether in the case of cars received for return loading with coal from coal mines customarily dependent upon connecting carriers for car supply.

That exceptions of this character could be made if applied to all railroads, may be conceded, but that is not what was done. Here the Commission, having found that *all* railroads were entitled to receive a definitely fixed sum per day for every car used by a foreign line, entered an order relieving some of the railroads, in whole or in part, from such payments. Plainly this order is in flat opposition to the finding and cannot be permitted to stand.

Confiscation may result from a taking of the use of property without compensation quite as well as from the taking of the title. *Chicago &c. Railway Co.* v. *Minnesota,* 134 U. S. 418, 458; *Reagan* v. *Farmers' Loan & Trust Co.,* 154 U. S. 362, 410, 412; *Chi., Mil. & St. P. R. R.* v. *Wisconsin,* 238 U. S. 491, 498-499. The use of railroad property is subject to public regulation, but a regulation which is so arbitrary and unreasonable as to become an infringement upon the right of ownership constitutes a violation of the due process of law clause of the Fifth Amendment. *Atlantic Coast Line* v. *N. Car. Corp. Com'n,* 206 U. S. 1, 20. And certainly a regulation permitting the free use of property in the face of an express finding that the owner is entitled to compensation for such use cannot be regarded otherwise than as arbitrary and unreasonable.

If, as claimed, the earnings of the short lines are insufficient to enable them to make full payment of car hire costs, the Commission may be able to afford a remedy by increasing the rates, or by a readjustment of the division of joint rates. *New England Divisions Case,* 261 U. S. 184; *Beaumont, S. L. & W. Ry.* v. *U. S.,* 282 U. S. 74. It cannot be done by confiscating for their benefit the use of cars of other railroads. Short lines, as well as trunk lines, participating in joint rates, must furnish their share of the equipment. If they do not own cars, they must rent them. The Commission itself has pointed out very clearly the basis for this requirement. *Virginia Blue Ridge Ry.* v. *S. Ry. Co.,* 96 I. C. C. 591, 593:

"The per diem that complainant pays for car hire is merely equivalent to interest, depreciation, insurance, taxes, and other car-ownership costs which it would have to bear if it owned the cars used in interline traffic. The car owner incurs these costs in the first instance, and is reimbursed by complainant [a short line] through the per diem or rental charges, thereby relieving the latter of the necessity of investing in equipment for this service."

The case does not present a question of apportionment of car hire costs. The Commission undertook to determine, and did determine, what was a reasonable compensation for the use of cars, and definitely fixed that compensation on a per diem basis. It then, by its order, denied such reasonable compensation in certain cases. This is in no proper sense an apportionment of expense, but a plain giving of the free use of property for which, the Commission had concluded, the owner should be paid. We must deal with cases as they are made, not as they might have been made. To do otherwise, if we had the power, would be only to invite confusion. What the Commission would do in a proper case of apportionment, involving many elements for consideration not now before us, we are not advised; and it has made no findings suitable to a determination of that matter.

We find no reason for applying a different rule in respect of the clause of paragraph (5) which altogether relieves the short lines from the payment of car hire on coal cars received for return loading with coal from mines customarily dependent upon connecting carriers for car supply. This is a blanket order in opposition to the express finding of the Commission quite as much as that part of the paragraph which grants to the short lines two days free

use of cars. The general rule in respect of the obligation of a railroad, whether a short line or a trunk line, to furnish equipment for the transportation of freight tendered to it, applies to the case of coal loaded at coal mines as well as to other traffic. *Demurrage on Coal and Coke,* 102 I. C. C. 554, 557, 558, citing *Brick from Michigan City, Ind.,* 42 I. C. C. 509, 511, where the general rule is stated.

In the first named case the Tennessee Railroad, a short line, undertook, by a proposed tariff, to make a demurrage charge against cars held at coal mines as an offset to per diem charges paid by it to the Southern Railway. The Commission, however, regarding the tariff as an attempt to transfer the railroad's car hire expense to the coal operators, required the tariff to be canceled, saying:

"Although respondent states that the proposed schedule was published for the sole purpose of recovering its car-hire cost on cars under load, it would be applicable to all cars. In other words, it would have the effect of largely offsetting respondent's cost of car hire by assessing shippers an amount equal thereto beyond a certain time. Respondent is under obligation to furnish the equipment necessary for the transportation of traffic tendered to it, and if it does not possess such equipment the charges paid for the revenue [evidently meaning rental] thereof can not be considered as an item of expense which is not included in the rate."

There is nothing in § 1(12) of the Interstate Commerce Act, as amended, which affords a basis for this part of paragraph (5), although the terms of the order might suggest that this subdivision was relied upon. Section 1 (12) has relation only to the subject of car distribution, that is, to a "just and reasonable distribution of cars" by each railroad "for transportation of coal among the coal mines served by it, whether located upon its line or lines or customarily dependent upon it for car supply." See *Assigned Car Cases,* 274 U. S. 564, 577. The object of this provision was to insure a proportional distribution of all available coal cars so as to afford a fair and equal opportunity to each mine to enjoy their use on the basis of its rating. *Baltimore & O. R. Co.* v. *Lambert Run Coal Co.,* 267 Fed. 776, 779.* It has nothing to do with the question of compensation for the use of cars by non-owning railroads. That subject, as already appears, is covered by § 1 (14).

*This case came to this court by appeal from the Circuit Court of Appeals and was remanded with direction to dismiss for want of jurisdiction and without prejudice. *Lambert Co.* v *Balt. & Ohio R. R. Co.,* 258 U. S. 377.

The part of the order (paragraph (5)) now under consideration creates an exemption in favor of all short lines and against all connecting carriers, irrespective of varying circumstances, in the face of a general finding that *all* common carrier railroads are entitled to compensation in the form of daily rental for the use of cars *when on foreign lines.* The language of the finding could not be more comprehensive. If followed, it necessarily compels payment of rental by the lines exempted as well as all other lines. It affords no justification for any exemption. We are not called upon to consider the evidence, since the Commission, upon the evidence, has made its findings. The vice of the situation is that the order of the Commission, that is to say, its judgment, does not conform to its conclusions upon the facts. In disapproving this paragraph, we do not mean, for the present, to go beyond the precise case presented, or to pass upon the question of the authority of the Commission to make fair apportionment of car hire costs, or, in special cases, to make adjustments and afford a proper measure of relief in the matter of payment of charges for the use of cars. Compare *Ohio Farm Bureau Federation* v. *A. & W. Ry. Co.*, 89 I. C. C. 489, 499; *Kanawha Black Band Coal Co.* v. *C. & O. Ry. Co.*, 142 I. C. C. 433, 442.

It follows that the court below should have set aside paragraph (5) of the order.

Decree reversed.

A true copy,

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 69.—October Term, 1931.

The Chicago, Rock Island and Pacific Railway Company, Chicago and North Western Railway Company, Illinois Central Railroad Company, et al., Appellants, *vs.* The United States of America, Interstate Commerce Commission, et al.	Appeal from the District Court of the United States for the Northern District of Illinois.

[November 23, 1931.]

Mr. Justice Stone.

Acting under authority conferred by the Esch Car Service Act [§ 1 (14) of the Interstate Commerce Act, as amended by Transportation Act, 1920, February 28, 1920, c. 91, § 402, 41 Stat. 456, 476], the Interstate Commerce Commission, after a nation-wide investigation, has prescribed certain rules which affect compensation for the use and detention of freight cars on lines of common carriers other than their owners. The principal subject of controversy here is the validity of so much of the Commission's order as relates to the apportionment of car-hire charges upon cars interchanged between a designated class of short line carriers and their trunk line connections. This part of the order, as well as that which the Court has sustained, should, I think, be held valid.

At the outset it should be pointed out that the part of the order held void does not deny to car owners the right to compensation for the first two days that a car is on the rails of a short line of the designated class. Regardless of the ownership of the car the order determines only which of the connecting carriers shall bear the burden of that compensation. The connecting trunk line may or may not own the car, but in either case the purpose and effect of the order is to determine the fair share of the *per diem* car-hire expense to be borne, respectively, by a trunk line and its connecting short line of the particular class, participating in a through route.

An adequate appreciation of the nature of the problem with which the Commission was required to deal by § 1 (14) involves an examination of the history and present day practices of car interchange between connecting carriers in the United States. In their early history the railroads in this country did not permit freight cars which they owned to leave their rails, and freight to be transported over more than one line was unloaded and reloaded at junction points.[1] With the development of more efficient transportation methods after the Civil War, this uneconomical and time-wasting practice was gradually abandoned. In 1886, the adoption by the southern railroads of standard gauge track removed the last physical barrier to free interchange of equipment throughout the nation; and in 1911 a rule which the railroads had long before come to recognize as a necessity of commerce was declared to be an obligation of law, when the Interstate Commerce Commission, under the amended Interstate Commerce Act, decided that carriers could not refuse to permit their freight cars to pass onto rails of connecting carriers. *Missouri & Illinois Coal Co.* v. *Illinois Central R. R. Co.*, 22 I. C. C. 39; see *St. Louis Southwestern Ry. Co.* v. *Arkansas*, 217 U. S. 136, 145, 146, 148. The obligation has never since been doubted, and the power to regulate it is exclusively vested in the Commission. *Assigned Car Cases*, 274 U. S. 564; *United States* v. *New River Co.*, 265 U. S. 533.

This freedom of car movement has been attained without impairment of the basic obligation of rail carriers to furnish equipment for carriage, either by owning it or hiring it, and, if by hiring it, to pay proper compensation.[2] Until comparatively recent years, the standard of compensation has been fixed by the

[1] For discussions of early practices of car supply, see Matter of Car Shortage and Other Insufficient Transportation Facilities, 12 I. C. C. 561, 573; Matter of Private Cars, 50 I. C. C. 652, 656, 657; Henry S. Haines, *Efficient Railroad Operation* (1919) 335.

[2] On the obligation of a common carrier (as respects other railroads) to furnish its own equipment or pay reasonable compensation for foreign cars, see Louisville & Nashville R. R. Co. *v.* Central Stock Yards Co., 212 U. S. 132, and also Virginia Blue Ridge Ry. *v.* Southern Ry. Co., 96 I. C. C. 591, 593; Western Pine Lumber Co. *v.* Director General, 96 I. C. C. 625, 628; Morehead & North Fork R. R. Co. *v.* Chesapeake & Ohio Ry. Co., 100 I. C. C. 45, 48; Jefferson & Northwestern Ry. Co. *v.* Missouri, K. & T. Ry. Co., 102 I. C. C. 72, 75

railroads themselves, by custom or agreement. Before 1902 the prevailing and customary basis was mileage; but this proved unsatisfactory. The then existing mileage rates are said to have been inadequately compensatory; the car owner had no means of verifying mileage on foreign lines; and no incentive was furnished for the prompt handling of cars. The first difficulty might, with some exceptions, have been removed by increasing the rates, but the second and third were inherent in the system, and the last involved, not the adequacy of the compensation for the use of cars, but the failure of the rate to exercise any controlling influence on car movements.

To meet these objections, the American Railway Association, in 1902, after many years of discussion and investigation, formulated a radically different method of car-hire settlement, a method which, as steadily elaborated and modified in the light of experience, has remained in force ever since. The basis of this plan is the requirement that every carrier using a car belonging to another shall pay to the owner a flat sum (fixed at one dollar since 1920) *per diem*, the liability for the following twenty-four hours to attach to the carrier holding the car at midnight.[3] Other provisions pertinent to this controversy are the agreement exacted of each member road to report daily to car owners all cars currently interchanged,[4] and the exemption granted to switching railroads, under certain circumstances, from the otherwise unvarying liability of the carrier in possession of a foreign car to pay *per diem* charges on it.[5] Under this exemption, denominated "switching reclaim", a carrier using cars in so-called "terminal switching service," pays *per diem* costs in due course on each car, but is entitled to recover from the connecting line haul carrier an amount per car based on the average detention period of cars in such service.

The American Railway Association is, and has been since its inception, a purely voluntary organization. No carrier is bound to subscribe to its Code of Per Diem Rules; and no carrier operating less than one hundred miles of road is eligible to voting membership, although it may become an associate member, subject to the

[3]Per Diem Rules, 1, 2, 9a.
[4]Per Diem Rules, 9a.
[5]Per Diem Rules, 5.

reciprocal rights and obligations of the Code, which the Association, by its voting members, prescribes. Subscription to the Per Diem Code entails substantial burdens, some of them peculiarly onerous for short lines.[6]

Of the 1731 steam railroads in the United States, 384 do not subscribe to the agreement, and of these nearly all are short-line, Class III roads, that is, roads having annual operating revenues of less than $100,000. Many of them are less than ten miles in length. Several important rules of the Association deal with relations between subscribers and this group of non-assenting lines. It is the frankly admitted aim of the Association to coerce the non-assenting lines into joining it, by subjecting them to treatment substantially less favorable than that accorded to subscribers. The cars of non-subscribers are not paid for on a *per diem*, but on a mileage basis, concededly less remunerative. They are denied the privilege, granted to Association members, of the switching reclaim. In addition, since 1922, trunk line members have been expressly prohibited from making car-hire arrangements with their nonsubscribing connections on any other than a strict *per diem* basis—arrangements to which the short lines assert their special situation entitles them, and which many trunk line members of the Association have granted in spite of the Code; others have expressed their willingness to grant it, were it not for the prohibition of the Code. This coercive use of the regulations, together with the asserted unfairness of the *per diem* basis generally to short lines, forms the background of the Commission's order now under review.

By the Esch Car Service Act, the Interstate Commerce Commission was given sweeping control over rules of car interchange and car hire settlement,[7] and the authority conferred by it in respect

[6]Annual dues of associate members are $40. They are required to abide by all the rules of the Association, which include the maintenance of daily accounting reports with car owners throughout the country. They must become members of the Bureau for the Safe Transportation of Explosives, and parties to the Interchange Agreement, and must put in force the National Car Demurrage Rules.

[7]Section 1 (14) of this Act provides: "The Commission may, after hearing, on a complaint or upon its own initiative without complaint, establish reasonable rules, regulations, and practices, with respect to car service by carriers by railroad subject to this Act, including the compensation to be

to compensation for use of cars has been exercised by the Commission in numerous instances upon complaint by individual carriers.[8] With such complaints pending before it, together with a petition by the American Short Line Railroad Association, the Commission, on January 4, 1926, instituted a general investigation upon its own motion, reopening many of the decided cases and consolidating pending ones with the general inquiry. An extended record was made up, embracing some 5000 pages of testimony and more than 500 exhibits. The order ultimately issued by the Commission, embodied in five numbered paragraphs, was addressed to all common carriers by railroad in the United States. *Rules for Car-Hire Settlement*, 160 I. C. C. 369, 165 I. C. C. 495.

In this order the Commission made no effort to replace in their entirety the *per diem* rules of the American Railway Association. Instead it removed the discrimination complained of by bringing all common carriers by railroad, subscribers or nonsubscribers, within those rules, as modified, to meet certain of the objections growing out of the special circumstances of the short lines. Paragraph (1) of the order entitles nonsubscribers to *per diem* payment for the use of their cars upon the same terms as the Association prescribes for cars of its members. Paragraph (4) requires all carriers, whether members of the Association or not, whose lines are more than 100 miles long or who receive cars from one subscriber and deliver them to another, to make car-hire settlements direct with car owners in accordance with the *per diem* rules. These provisions are not attacked by any of the appellant railroads. Paragraph (2) entitles nonsubscribers to switching reclaim, on account of cars handled in terminal switching service, upon the same terms as hitherto received by subscribers. The practical effect of this paragraph is to compel allowance of the switching reclaim to nonsubscribing short lines, since the existing practice of allowing the reclaim to subscribers is generally approved and regarded as necessary, as the revenue from switching services is insufficient to meet the car-hire cost of the carriers performing them. Paragraph (3) attaches short line railroads which

paid for the use of any locomotive, car, or other vehicle not owned by the carrier using it, and the penalties or other sanctions for nonobservance of such rules, regulations, or practices."

[8]Cases cited in notes 15 and 16, *infra*.

return cars to the road from which received, to their connecting carriers for purposes of car-hire accounting and settlement. Paragraph (5) requires the same class of short line roads to pay *per diem* to their connecting carriers, but with the deduction of two days' free time per loaded freight car, and with the proviso that in the case of short line roads, "no car hire need be paid on cars received for return loading with coal from coal mines which are customarily dependent upon connecting carriers for car supply."

This Court now holds that paragraphs (2) and (3) are valid, but, without considering the evidence, that paragraph (5) is void, being on its face so arbitrary and unreasonable as to deprive the appellants of property without due process of law. In support of this conclusion, it is said that, the Commission having found generally "that the present *per diem* charge of $1 per car day reasonably compensates car owners for average car ownership and maintenance costs," its order granting to the short lines the two days' allowance is in such flat opposition to this finding that the order cannot be allowed to stand as an exception to the general rule.

But there is no such opposition. The Commission was concerned and dealt with far more important questions than the determination of the reasonable *per diem* rental of a freight car. Its declared purpose in instituting the proceeding was to investigate the rules of car-hire settlements and to make "such order . . . in the premises as might be warranted by the record." The reasonableness of the two days' free time allowance and that of the switching reclaim were the chief subjects of inquiry. The one which the Court has disapproved is no more an exception to the general finding than the other which it approves. Both were expressly found reasonable by the Commission and both are consistent with its adoption of the *per diem* as a standard for measuring the rental value of cars for purposes of car-hire settlements. The real issue presented upon the evidence, the findings and the order of the Commission is not whether the *per diem* is a fair method of compensating the car owner—all agree that it is—but whether it is a fair method of apportioning the burden of car-hire necessarily incident to a through route; not whether compensation should be paid, but who shall pay it. Upon the record, the Commission's findings and order cannot justly be characterized as declaring in the same breath that the two days' free time allowance is both reasonable and unreasonable. See United States v. Wells, 283 U.S. 102. 111. 120.

The Commission's investigation embraced all the elements which affect the use of the *per diem* as an instrument of regulation of the movement of interchanged cars and as a means of apportioning car-hire costs between trunk line carriers and connecting short line carriers of the designated class participating in the joint haul. The findings of the Commission are based on the investigation which it made and support its order. For the following reasons, the fifth paragraph of the order is not open to the objections urged against it.

First. The very language of the Esch Car Service Act, authorizing the Commission to establish "rules, regulations and practices with respect to car service . . . including the compensation to be paid", treats car-hire as one form of regulation of the service. It is but a recognition of the historic fact that the car-hire charge may serve to penalize the unnecessary detention of cars and thus to regulate car movement, one of the considerations which led to the substitution of the *per diem* charge for the mileage system of car-hire payments.[9] In this respect it is analogous to demurrage, in which the penalty element of the money payment imposed is emphasized over the element of compensation.[10]

[9]As bearing on the primary purpose and function of the *per diem* system, see the statement in Matter of Private Cars, 50 I. C. C. 652, 661, that during the years immediately following 1902 the mileage rates were actually more remunerative than *per diem*, and the suggestion that this was a main cause of many railroads' forming subsidiary corporations to own and lease private cars on a mileage basis. See also the early statement that the compensatory aspect of the mileage system was a minor one, since it was to be expected that, with a proper balance of car ownership, debits and credits for car hire would equalize themselves. Burton Stock Car Co. *v.* Chicago, Burlington & Quincy R. R. Co., 1 I. C. C. 132, 140. In later cases the Commission has adverted to the punitive aspect of *per diem*, New England Divisions, 62 I. C. C. 513, 537, 538, and has stressed also the element of reciprocity as distinguishing the situation of the line-haul carriers and that of many of the short lines. Virginia Blue Ridge Ry. *v.* Southern Ry. Co., 96 I. C. C. 591, 593; Lake Erie & Fort Wayne R. R. Co., 78 I. C. C. 475, 489; Marcellus & Otisco Co. *v.* New York Central R. R. Co., 104 I. C. C. 389, 392.

[10]For discussions of the nature and purpose of demurrage, important for its analogy to *per diem*, see Turner, Dennis & Lowry Lumber Co. *v.* Chicago, Milwaukee & St. Paul Ry. Co., 271 U. S. 259, aff'g. 2 F. (2d) 291; Swift & Co. *v.* Hocking Valley Ry. Co., 243 U. S. 281; Pennsylvania R. R. Co. *v.* Kittanning Iron & Steel Mfg. Co., 253 U. S. 319, 323. See also Investigation and Suspension of Advances in Demurrage Charges, 25 I. C. C. 314, 315.

It is for this reason, among others that the Commission has generally refused to consider car-hire costs in fixing divisions,[11] and in this case the Commission found that divisions had not customarily been adjusted with relation to such costs.

That the *per diem* charge in its aspect as a penalty was an important element in the determination of the Commission, appears from its opinion and order. As the two days' free time allowance applies only to those cars which the short line receives from and returns to the line carrier, it is in practical effect limited to those cars with respect to which the short line renders terminal and originating services. Under the national demurrage rules, the terminal lines are compelled to allow to shippers two days' free time for loading and unloading before demurrage attaches. There is nothing in the Fifth Amendment to preclude the Commission, in apportioning car-hire costs, from giving consideration to the operation of the *per diem* charge as a penalty for the detention of cars and from making some allowance for the fact that the terminal carrier is in turn required to allow to shippers time free of demurrage charges. The two days which it did allow are by no means an exact offset of the free time allowed under the demurrage rules.[12] The amount of time to be allowed was a matter for the judgment of the Commission, influenced by this, together with all other relevant considerations. The Commission gave some, but

[11]The Commission in its most extended discussion of the point said that car-hire costs never had been, and should not be, an element in the fixing of divisions. New England Divisions, 62 I. C. C. 513, 538. Other cases in which the Commission has discussed the relation of *per diem* to fair divisions are Chaffee R. R. Co. *v.* Western Md. Ry. Co., 156 I. C. C. 471; Western Md. Ry. Co. *v.* Maryland & Pa. R. R. Co., 167 I. C. C. 57, 63. In some exceptional circumstances, the Commission has weighed car-rental expenses when determining divisions of the freight rate. See Chaffee R. R. Co. *v.* Western Md. Ry. Co., 102 I. C. C. 53, 59; Middle Creek R. R. Co. *v.* Baltimore & Ohio R. R. Co., 168 I. C. C. 110, 117 (the fact that no car-hire was charged a short line was considered in fixing divisions).

[12]The terminal carrier may be required to allow four days' demurrage for a single car while on its line, two days for unloading and two for loading. The demurrage rules do not count Sundays or holidays, nor, for certain commodities, days of stormy weather. On the other hand, the short line terminal carrier may benefit if the shipper does not use his two days, although under the average demurrage agreement the unusued portion is likely to be inconsiderable.

not controlling weight to the fact that the short lines, when thus serving as terminals, would be unduly penalized if no allowance were made to offset the time allowed to shippers. There was ample evidence supporting its conclusion, and its order no more deprives the carrier of its property than would a corresponding determination that time free of demurrage should be allowed to the shipper, and that it should be two rather than one or three days.

Second. In any aspect, the Commission's order cannot be viewed as requiring trunk lines to furnish their short line connections with free cars. As stated, the part of the order with which we are now concerned deals with the problem of just apportionment, between certain connecting carriers, of the car-hire cost of a joint haul. The Per Diem Rules of the American Railway Association make that apportionment according to the length of time the car is upon the rails of the respective carriers. The Commission found, and the evidence supports its finding, that such an apportionment is in many respects unfair to short lines, engaged in time-consuming terminal and originating services. The Commission's modification of the Railway Association's formula is based upon the necessary detention of cars in the performance of such services by the short line for the benefit of both carriers. The assumption is inadmissible that in so far as trunk lines are thus required to pay *per diem* while a car is on a connecting carrier's rails, they are necessarily compelled to assume an operating cost of the connection. It presupposes the answer to the very question to be decided—whether the *per diem* without allowances is a just basis for apportioning car-hire costs in the case of the short lines. The fallacy of the similar assumption, once commonly made, that mileage should be the sole test of the reasonableness of divisions of joint rates, was repeatedly pointed out both by the Commission and by this Court, before Congress specifically enumerated other elements for consideration.[13] In both cases, the reduction of the broad statutory injunction of reasonableness to a single one of its

[13] See, e. g., O'Keefe *v.* United States, 240 U. S. 294, 303, 304; Star Grain & Lumber Co. *v.* Atchison, T. & S. F. Ry. Co., 14 I. C. C. 364, 370; Stacy & Sons *v.* Oregon Short Line R. R. Co., 20 I. C. C. 136, 138; Divisions of Joint Rates and Fares of Missouri & North Arkansas R. R. Co., 68 I. C. C. 47, 59. Compare Transportation Act, 1920, February 28, 1920, c. 91, § 418, 41 Stat. 456, 486; New England Divisions Case, 261 U. S. 184, 195; New England Divisions, 126 I. C. C. 579, 667.

constituent elements, disregarding all others, produces a result with a false appearance of reasonableness, which, when gauged by the standard which the regulatory statute sets up, is unreasonable and unjust.

Far from representing any universal standard of natural justice for the fair apportionment of car-hire costs, the *per diem* system is of recent origin, and adopted with purposes primarily in view quite foreign to the simple end of accurate compensation.[14] The completely disparate measure of mileage prevailed until 1902. Mileage is still the basis upon which owners of private railroad cars are compensated;[15] and until the orders issued by the Commission in the present controversy, it was the measure of payment stipulated by members of the American Railway Association for cars of non-members. The *per diem* is admittedly but a rule of thumb, though the best which experience has devised to meet all the complex requirements growing out of the average car-hire situation. In a large number of instances the Interstate Commerce Commission, to secure a more just apportionment, has ordered that car-hire costs of certain short-line industrial common carriers be computed with a varying number of days of "free time";[16]

[14]See note 9, *supra*; Haines, *loc. cit. supra*, note 1; L. F. Loree, *Railroad Freight Transportation* (2d ed. 1929), pp. 383, 390.

[15]Under § 1 (14), the Commission has several times prescribed reasonable rates of compensation on a mileage basis for private cars. In Matter of Private Cars, 50 I. C. C. 652, 684-686, it considered the *per diem* basis at length and concluded that for private cars the mileage system was preferable. See also Armour & Co. *v.* El Paso & Southwestern Co., 52 I. C. C. 240; Paragon Refining Co. *v.* Alton & Southern R. R., 118 I. C. C. 166; Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520, 556; Assigned Car Cases, 274 U. S. 564, 575.

[16]The Commission has many times, apparently acting under § 1 (14), prescribed terms of car compensation for industrial common carriers. Compare the approval, prior to 1917, of the placing of short lines on a demurrage basis, in Drummond & S. W. Ry Co. v. Chicago, etc. Ry. Co., 21 I. C. C. 567. These cases took their starting point, before the passage of the Each Car Service Act, in the Industrial Railways Case, 29 I. C. C. 212, 231-233, in which the Commission found that the switching reclaims under the *per diem* system were a fertile source of rebates and exemptions from demurrage for shippers who maintained independently incorporated railroads which were in substance plant facilities. Following the announcement in the Tap Line Cases, 234 U. S. 1, of a rule giving many of the roads involved in the Industrial Railways Case the status of common carriers, the Commission, in a

and in a still larger number of instances trunk lines themselves

supplemental report, modified its original findings as to such carriers, and permitted them to reestablish *per diem* and reclaims. 32 I. C. C. 129, 133. See also Second Industrial Railways Case, 34 I. C. C. 596, 600. Subsequently, however, in a long series of cases the *per diem* system as applied to industrially owned common carriers was condemned, and different methods of car hire compensation prescribed. In the Northampton & Bath R. R. Co. Case, 41 I. C. C. 68, 74, the effect of the arrangement prescribed was to give the carrier two days' free time counterbalancing the two days accorded shippers under the demurrage rules, plus one day in addition. In the Owasco River Ry. Case, 53 I. C. C. 104, 113, a straight *per diem* system was ordered; but this basis of settlement was disapproved soon after in Birmingham Southern R. R. Co. *v.* Director General, 61 I. C. C. 551. In this case an industrial common carrier specifically besought the Commission to fix reasonable charges under § 1 (14), asking for a *per diem* system with reclaims for all cars, whether handled under switching rates or under joint rates with divisions. The Commission denied this relief, and condemned reclaims, but prescribed a demurrage system, giving the short line 72 hours free time on cars loaded one way, credits for cars sooner returned to be averaged against debits, and the short line to be free to execute average demurrage agreements with shippers. The Birmingham Southern was not eligible for switching reclaims under the A. R. A. rules in respect to traffic handled under joint rates. Its average detention of foreign cars was shown to be 3.2 days.

The so-called Birmingham Southern Rules were subsequently prescribed for other industrial common carriers in National Tube Co. *v.* Pittsburgh, C., C. & St. L. R. R. Co., 61 I. C. C. 590; Illinois Northern Ry., 61 I. C. C. 629; Pullman Railroad Co., 61 I. C. C. 637; Benwood & Wheeling Connecting Ry. Co. *v.* Pittsburgh, C., C. & St. L. R. R. Co., 62 I. C. C. 357; Tionesta Valley Ry. Co., 62 I. C. C. 473; Genesee & Wyoming R. R. Co., 62 I. C. C. 680; Lake Erie & Fort Wayne R. R. Co., 63 I. C. C. 122 (determining questions left open in 58 I. C. C. 558, 561, 666, 671, 677, 680); Moshassuck Valley R. R. Co. *v.* N. Y., N. H. & H. R. R. Co., 69 I. C. C. 368. See also Mount Hope Mineral R. R. Co. *v.* Central R. R. Co. of N. J., 74 I. C. C. 195, 199, 200. The question was reexamined with respect to several of the roads involved in the preceding cases in Lake Erie & Fort Wayne R. R. Co., 78 I. C. C. 475, and the Birmingham Southern rules somewhat modified. In this case the notion that the object was to relieve the industrial common carrier altogether of car hire was specifically repudiated. *Ibid.* at 489. The Birmingham Southern Rules were again prescribed in Valley & Siletz R. R. Co. *v.* Southern Pac. Co., 80 I. C. C. 724; Hanging Rock Iron Co. *v.* Norfolk & Western Ry. Co., 87 I. C. C. 373; Lime Rock R. R. Co. *v.* Maine Central R. R. Co., 102 I. C. C. 48.

For other examples of the Commission's approval of the relief of short lines from strict *per diem*, see Mount Hood R. R. Co. *v.* Director General, 60 I. C. C. 116, 117; New York Dock Ry. *v.* Baltimore & Ohio R. R. Co., 89

have voluntarily instituted such arrangements.[17] The device of

I. C. C. 695, 696, 702, 706. Compare Jones & Laughlin Steel Co. *v.* Director General, 60 I. C. C. 325, 331.

With Virginia Blue Ridge Ry. *v.* Southern Ry. Co., 96 I. C. C. 591, there began a series of cases denying non-industrially owned short lines relief from the straight *per diem* rules of the A. R. A. The series was continued in Western Pine Lumber Co. *v.* Director General, 96 I. C. C. 625: Morehead & North Fork R. R. Co. *v.* Chesapeake & Ohio Ry. Co., 100 I. C. C. 45; Chaffee R. R. Co. *v.* Western Md. Ry. Co., 102 I. C. C. 53; and Jefferson & Northwestern Ry. Co. *v.* Missouri, K. & T. Ry. Co., 102 I. C. C. 72; and concluded in Marcellus & Otisco Co. *v.* New York Central R. R. Co., 104 I. C. C. 389. See also Superior & S. E. Ry. Co. *v.* Director General, 63 I. C. C. 431; Carnegie Steel Co. *v.* Director General, 80 I. C. C. 269, 270, 274.

This last group of cases states that the application of the Birmingham Southern Rules is to be restricted to industrial common carriers, and that their purpose is to prevent undue favoritism to the proprietary industries through the payment of switching reclaims. Many of the roads in question, however, were operating at least in part under joint rates and divisions, and thus were not eligible for reclaims; and the allowance to them of a modified demurrage basis was much more favorable than *per diem*. In the present investigation the Commission abandoned its distinction between industrial and non-industrial common carriers, revoked its determination in cases of both the Birmingham Southern and the Virginia Blue Ridge types, and substituted the provisions of paragraph (5) of its order.

[17]The following table, taken from the Commission's Report (Record, p. 39), illustrates the extent to which non-subscribing railroads outside of Chicago, have settled on some basis other than *per diem* with the trunk lines with which they exchange traffic:

Trunk Line	*Nonsubscriber connections.*		
	Total	Which pay straight *per diem*	Which settle on some other basis
Burlington	18	2	16
Chesapeake & Ohio	10	5	5
Great Northern	21	0	21
L. & N.	10	2	8
Missouri Pacific	20	3	17
New Haven	8	5	3
Northwestern	9	6	3
Pennsylvania	55	6	49
Soo Line	12	4	8
Southern	27	20	7
Southern Pacific (Pacific Lines)	46	24	22
Southern Pacific (Texas and Louisiana)	14	10	4
St. L. S. W.	7	3	4
Union Pacific	15	6	9
B. & O.*	....	....	....

*Exact number not given.

This table includes 67 industrial roads among the nonsubscriber roads and is therefore not a wholly accurate reflection of the relations of other short

"switching reclaim" itself, elsewhere concerned in this case, pointedly exemplifies the admitted inapplicability of the *per diem* system to certain special operating conditions. In this instance carriers engaged in a time-consuming switching service are in effect relieved altogether of car-hire costs; and the Court has sustained this departure by the Commission from the single standard of time of detention. Perhaps the most striking example of all is the operation of the rule imposing upon the carrier in possession of a car at midnight liability for *per diem* for the following twenty-four hours. Under this rule an intermediate carrier, incurring no delays for loading or unloading, may receive a car shortly after midnight, haul it several hundred miles, and by delivering it to a third road before the following midnight escape car-hire altogether. The seeming unfairness, when measured in terms of the period of detention alone, disappears when that element is examined in comparison with the compensating effects of the reciprocal operation of the rule between connecting carriers and the difficulties and expense of accounting for less than twenty-four hour periods. Freedom from the *per diem*, when all relevant considerations are taken into account, is therefore not necessarily a gratuity.

In attempting to find a measure of the just apportionment of car-hire costs, the railroads and the Commission have had to face a condition of extraordinary complexity, and not a theory. The Fifth Amendment does not command the impossible. It does not demand that the power and duty of the Commission to make the apportionment be thwarted by requiring it to adopt a standard of unattainable exactness. The validity of what is of necessity a rule of thumb, best adapted to secure a just apportionment, can hardly depend upon a perfect precision in its application; its imperfections in this respect are themselves compensated by an advisedly sought simplicity and convenience of operation.

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lines with the trunk line carriers; but even when the industrial roads are eliminated from the table, it is still apparent that the trunk lines disregard the Code with respect to a large proportion of the total nonsubscriber connections. Settlement with industrial roads on other than the *per diem* basis does not violate the Code. But the present order of the Commission, it may be noted, does not distinguish between industrial and other short lines.

Under these circumstances, it is not to be supposed that in a special situation such as that of the short lines, the mere departure by the Commission from the *per diem* basis for apportioning car-hire costs between parties to a joint haul, can of itself constitute either a taking of the property of the carrier affected by it, or a taking of it without compensation. The appellants have no vested right not to pay their share of the hire of cars engaged in a joint service to which they are parties, simply because those cars are temporarily off their own rails. They are entitled only to have the Commission make reasonable rules for car-hire apportionment; and the reasonableness of any rule which it may adopt is a question wholly independent of its conformity to the measure of time of detention or to the Per Diem Rules of the American Railway Association. The reasons which support that part of the order allowing switching reclaims, as well as those advanced by the Court to justify that imposing on the trunk lines the burden of accounting for car-hire settlements on cars exchanged with the short lines, do not differ in principle from those which support the two day allowance, and at least should have led to some consideration by the Court of the evidence warranting the latter.

Third. The appellants have not sustained their burden of establishing that the Commission's rule is unreasonable. The principles to which courts ordinarily adhere in reviewing orders of the Commission do not admit of dispute. If the Commission does not refuse to consider relevant evidence, if it does not proceed upon a mistake of law, if it acts upon evidence sufficient to support its findings, the Court will not itself undertake to weigh such evidence, to inquire into the soundness of the reasoning which induced the Commission's conclusions, or to question the wisdom of regulations which it prescribes. *New England Divisions Case,* 261 U. S. 184, 203, 204.

But the position of appellants is that the question is not one of the reasonableness of the Commission's action. They insist that as the *per diem* is an operating expense, like any other which the short line must pay, no evidence can justify an order that it should be paid by any other railroad.[18] Their position ignores the fact that the action of the Commission is no more than

[18] Appellant's brief, p. 95.

the exercise of its undoubted power to apportion the car-hire costs of a joint service by connecting lines and is based upon a fundamentally erroneous theory of the powers of the Commission to prescribe reasonable rules for car-hire settlement. The *per diem* principle adopted by the American Railway Association in 1902 is not embedded in the Fifth Amendment adopted by this nation in 1791. Departures from it are not forbidden any more than any other action which may be taken under Section 1 (14), if reasonable and supported by adequate evidence. See *Assigned Car Cases, supra,* p. 580.

Nevertheless, appellants have presented no argument either here or below upon the reasonableness of the present departure or upon the issue of the adequacy of the evidence. During the Commission's hearings they steadily opposed the introduction of testimony relating to comparative proportions of car-hire expense and operating costs as between short lines and trunk lines, or to the comparative proportions of car-hire expenses and operating revenues. They offered no such evidence themselves; nor did they attempt to defend the fairness to the short line carriers of the *per diem* basis of apportioning car-hire costs, beyond asserting that a fair apportionment of such costs was necessarily an apportionment *per diem,* an assertion unsupported by any evidence to establish the unfairness of any other of the formulae proposed. The appellants having confined their entire case to this contention, it suffices for this Court to point out their error.

Fourth. Even assuming the question of the sufficiency of the evidence to be open, it is clear that the Commission had ample evidence before it to show that short lines were being compelled to bear a disproportionate burden of car-hire costs. It was undisputed that the *per diem* system was adopted by the larger carriers in disregard of protests of the short lines, and that the *per diem* rules had been modified and elaborated by members of the American Railway Association without giving the short lines a voice in the decisions. The evidence left no possible question that the short lines lost heavily by the replacement of the mileage system, which imposed no car hire whatever for equipment not in motion, by the *per diem* system, which emphasizes the period of detention. Short line witnesses presented a mass of evidence of the time-con-

suming character of the services performed by short lines in terminal and originating operations, including spotting and weighing cars, issuing through bills of lading, maintaining joint tariffs and computing rates, and, most important of all, the allowance to shippers of two days' free time for loading and unloading, as provided under the National Demurrage Rules.[19]

It was urged that with the two days' allowance to short line feeders, the trunk lines could still derive more net revenue from the haul than would accrue if the shipments originated on their own lines at the points of interchange. There was evidence that operating conditions of short lines, because of the very shortness of the haul and physiographical and other difficulties, are characteristically unfavorable to speed in handling. Many witnesses testified that the measurement of car-hire costs by time of detention imposes a peculiarly heavy burden upon a class of carriers benefited by paragraph (5) of the Commission's order, that is, short lines engaged in returning loaded cars empty, or empty cars loaded, to trunk line connections, because, unlike other lines engaged only in part in such operations, they never have the opportunity of averaging gains and losses, the advantage of a long haul with the disadvantage of a short.[20]

In corroboration of this testimony a great amount of evidence was received, as a result of a questionnaire sent to all short lines desiring to be heard, to show that the ratio of car-hire expenses to total expenses, and of car-hire costs to revenues was substantially higher for the short lines, than for their trunk line connections. Upon such a record it cannot be said that the Commission could give no weight to those considerations and could not reasonably conclude that the short lines were entitled to relief; on the contrary, the evidence justified the conclusion that the *per diem* basis enforced or threatened to be enforced against them by the Ameri-

[19]Note 10, *supra*. See Loree, *op. cit. supra*, note 14, p. 822 *et seq.*; also pp. 264, 268 *et seq.*, showing a great preponderance of car time occupied by loading and unloading and terminal and delivery movement. "There is general agreement between (*sic*) the railroad men that the time consumed by an average car on the road is very insignificant in comparison with that in the terminal and intermediate yard and for loading and unloading." Shih-Hsuan King, *Railroad Freight Car Service—Control by the Car Service Division of the American Railway Association*, p. 67.

[20]See note 14, *supra*.

can Railway Association would, in fact, result in transferring to larger roads part of the legitimate revenues of the short lines, and thus would deprive them of their property without any process of law whatever.

Fifth. The Commission's order does not go beyond the relief to which the short lines showed themselves entitled, nor does it prescribe a formula unreasonably burdensome upon their trunk line connections, nor is it based upon an improper classification. Paragraph (5) is strictly limited to cars which are used by short lines in terminal or originating services; and to that extent is accurately framed to meet the only substantial complaint which the short lines made. It is also apparently limited to *carriers* engaged *exclusively* in such service; and appellants suggest that the resulting exclusion of roads performing any amount of intermediate service, however slight, is arbitrary and unreasonable. Whatever the proper construction of the order, and whatever the justice of any complaint by a carrier of the class excluded, it is sufficient answer here that appellants do not themselves belong to that class, *Roberts & Schaefer Co.* v. *Emmerson*, 271 U. S. 50, 54, 55, and cannot complain that the Commission's order was not given a wider application.

The order also excludes terminal or originating carriers of more than one hundred miles in length, a class to which appellants do belong. The opinion of the Court concedes that the two day allowance would be valid if made to all railroads, but insists that an allowance which could be made to all cannot be made to a selected class, the short lines which perform terminal services. The contention is in effect that the Commission, confronted with evidence of the peculiarly onerous operation of *per diem* charges on terminal and originating movements, had power to relieve it, if at all, only by establishing a system of universal reclaim for terminal and originating car-hire costs, analogous to switching reclaim, and running in favor of all carriers engaged in such service. But the Commission's authority is not restricted either by § 1 (14) or by the Constitution to granting relief to all or none, regardless of their need. There was abundant evidence that the *per diem* system equalized itself for trunk line carriers through the averaging of gains and losses from long and short hauls. There was no evidence that the trunk lines regarded that system

as unfair. The limitation of the order to carriers of less than 100 miles engaged exclusively in terminal or originating services, whose special situation rendered the *per diem* peculiarly burdensome to them, falls well within the bounds of reasonable classification marked out by the decisions of this Court. *Wilson* v. *New*, 243 U. S. 332, 354, and cases cited.

Nor was the Commission's action within the class chosen unreasonable. A remedy may, and, in the present case, must be shaped to meet the evil. Instead of abandoning the *per diem* system altogether for the benefit of the comparatively few roads prejudiced by it, the Commission lightened its burden upon them by a rule of thumb no more crude or arbitrary than the principle of *per diem* itself. Had it returned all roads to a mileage basis, or, as the opinion of the Court suggests, allowed the two days to all roads, the short lines would equally have been relieved of the disadvantages of *per diem*, but the trunk lines would have lost its advantages. The remedy given by the Commission retains the benefits of *per diem* and relieves the short lines of the brunt of the burden arising from the two free days accorded shippers, while leaving them to bear the other special costs created by a time measure for short hauls, and conforms to the urgent suggestions of trunk line witnesses that any practicable rule must be simple of statement and ready of application. It is less extreme in result than the device of switching reclaim, in approval of which this Court and the Commission agree, and which was designed to relieve carriers whose services, many witnesses testified, are distinguishable from those of these short lines only by being performed under a switching rather than a line haul rate. Virtually all the 141 short line witnesses testified to the average detention period of cars on their lines, and many of them to the amount of car-hire which would be incurred under the Commission's proposed rule. The record justifies the opinion that only rarely would the short lines escape the payment of substantial sums, and then only under circumstances as exceptional as those created by the midnight rule already mentioned. The weighing of evidence of this sort is peculiarly a matter to be left to the administrative "tribunal appointed by law and informed by experience". *Illinois Central R. R. Co.* v. *Interstate Commerce Commission*, 206 U. S. 441, 454. No adequate reason has been advanced for

rejecting the conclusion which that tribunal drew from the evidence presented to it.

Sixth. The Commission, under the authority conferred by paragraph (14) to establish reasonable rules and practices for car service, "including the compensation to be paid for the use of any . . . car", is empowered to make orders of the character issued in this investigation without instituting a divisions case to review the rate structure and financial condition of every carrier in the country. The contention of appellants to the contrary is based upon grounds so sweeping as either to deny the existence of the power or to render impossible its effective exercise. It is urged that the effect of the Commission's order is to require a transfer of revenue from appellants and other roads similarly situated to the designated short-line carriers; that rates, divisions, and financial condition of the railroads were not in issue; and that the Commission cannot avoid the rules governing the fixing of divisions by effecting a redistribution of revenue between carriers under the guise of regulation of car-hire. But as any alteration in the rules governing compensation for the use of cars authorized by § 1 (14) necessarily affects the revenues of the carriers concerned, the argument amounts to an assertion that there can be none except in a divisions case.

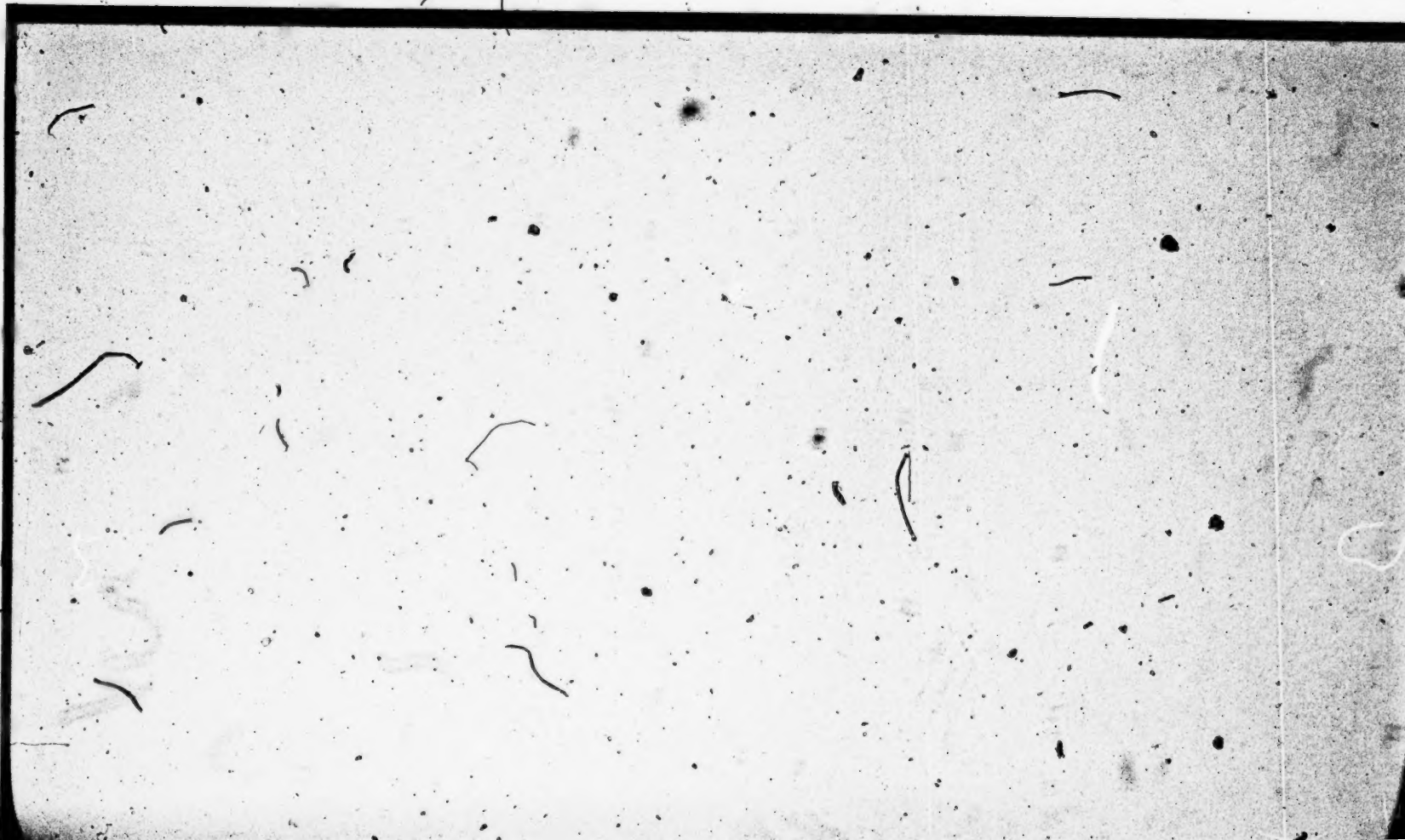
In so far as the appellants' imputation is that the Commission was less concerned with fair apportionment of car-hire costs than with financial rehabilitation of weak lines, it may be said shortly that this is without support in the record. The Commission did consider, and properly so, the relation between car costs and total operating costs of short lines, and between car costs and revenues from joint hauls. It found that the short lines were paying disproportionately large sums for the use of cars; and it found further that their rates and divisions had not customarily been adjusted with relation to such costs.[21] The Commission's power to remedy an unfair basis of car-hire apportionment is not confined to remitting the injured carriers to the uncertainties of rate litigation which, but for that unfairness, would be unnecessary, and which opens up a multitude of unrelated questions serving only to obscure the immediate issue. Many of the short lines are not

[21] See note 11, *supra*.

able financially to litigate a divisions case. Rates established to absorb unduly heavy car-hire costs, moreover, must themselves be unduly high; and in many instances would defeat the object of relief. Finally, the Commission is without jurisdiction to adjust many divisions of intrastate rates. Its authority over car-hire charges is without such limitation.

The Commission considered at length its power and duty to apportion car-hire costs independently of divisions. Its judgment that they should be dealt with, under the authority conferred by § 1 (14), was in accordance with the unvaried practice of the trunk lines, whose traffic and transportation departments have customarily kept divisions and car-hire rigidly divorced. There is no basis, either in fact or law, for the assumption that the questions involved in an apportionment of car-hire, at least in cases like the present, are not separable from those involved in a divisions case, or for the assertion that the power conferred on the Commission by § 1 (14) cannot be exercised independently of its power to order a division of a joint rate.

Considerations especially applicable to coal cars placed on mine sidings on the short lines for loading, but analogous to those which led to the two day allowance for cars of other types, support the conclusion of the Commission that the *per diem* rule should not operate at all in the case of the former. It suffices to say that the difference is based upon the peculiar character of this traffic and of the originating service rendered, and particularly upon the fact that under the applicable demurrage rules short lines are forbidden to collect any demurrage on coal cars so placed. See Demurrage on Coal & Coke, 102 I. C. C. 554. The principle involved being the same as that underlying each of the other provisions of the order, this one, like the others, should not have been disturbed unless an examination of the evidence disclosed that it was not reasonable.

The judgment should be affirmed.

Mr. Justice HOLMES and Mr. Justice BRANDEIS join in this opinion.